Stakeholders' Comments received in response of Consultation Paper on Need for new legal framework governing Telecommunication in India

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ACT | The App Association

24 August 2022

Department of Telecommunications
20, Sanchar Bhawan, Ashoka Road
New Delhi, Delhi 110001
India

RE: *Comments of ACT | The App Association on the Department of Telecommunication's Consultation, 'Need for a new legal framework governing Telecommunication in India'*

Dear Sir/Madam:

ACT | The App Association (the App Association) writes to provide comments to the Department of Telecommunications' (DOT) consultation on a new legal framework for telecommunications in India.[1] The App Association represents the interests of small business technology developers from around the world, including in India. The App Association is committed to preserving and promoting innovation generally as well as accelerating the growth of technology markets such as the internet of things (IoT) through robust standards development and a balanced intellectual property system. The App Association applauds DOT for undertaking a public consultation on this matter.

The App Association supports DOT's efforts to reimagine India's telecommunications legal framework, and to develop policies and principles that will enable creation of a vibrant and competitive telecom market to strengthen India's long-term competitiveness and serve the needs of its citizens. App Association members' innovations provide the interface for IoT, an all-encompassing concept where everyday products use the internet to communicate data collected through sensors. IoT will continue to enable improved efficiencies in processes, products, and services across every sector. The rise of IoT is demonstrating efficiencies in key segments of the Indian economy, including retail, agriculture, and healthcare, and is projected to be worth more than $9.28 billion in India by 2025.[2]

The real power of IoT comes from the actionable information gathered by sensors embedded in connected devices. IoT devices are useful in direct consumer interactions but have huge potential as part of what is now commonly referred to as "big data." For this document, we define this term to mean structured or unstructured data sets so large

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[1] *See* https://dot.gov.in/sites/default/files/Consultation%20Paper%20final%2023072022-1.pdf?download=1.

[2] https://insights.frost.com/pr_ict_sdaivanayagam_pc26_indianiot?campaign_source=PR.

or complex that traditional data processing applications are not sufficient for analysis. As sensors become smaller, cheaper, and more accurate, big data analytics enable more efficiencies across consumer and enterprise use cases.

IoT deployment will be highly use case-dependent yet will depend on standardised solutions to ensure the ability for data to flow between parties. To date, the technology industry has utilised open application programming interfaces (APIs) and other widely adopted standards (e.g., TCP/IP) to enable interoperability. For example, in healthcare, a miniaturised IoT sensor embedded in a connected medical device must be able to communicate bidirectionally in real time. This capability enables a healthcare practitioner to monitor a patient's biometric data and allows the patient to communicate with a caregiver in the event of a medical emergency. Other uses, such as sensors deployed to alert security of an unauthorised presence, may only require the ability to send data to security professionals with minimal (or even no) capability to receive communications. And ultimately, the rise and sustainability of IoT in India will depend on a robust and accessible telecommunications network that leverages standardised solutions.

The app industry has experienced rapid growth alongside the rise of smartphones. The App Association's community is the primary driver of a global $6.3 trillion digital economy[3] that employs millions of Indians. App Association members develop and use IoT sensors that can be found in an increasing amount of consumer and enterprise objects and develop the software apps that serve as the main interface for communicating with and managing these devices. India's framework for telecommunications should enable Indian companies and individuals to easily access and use these IoT innovations.

Given the intertwined relationship between mobile and IoT devices, software apps, and telecommunications networks, we strongly encourage DOT to ensure that an updated Indian telecommunications framework has clear and predictable policies that will help secure the Indian market's global competitiveness and will not create barriers for Indian innovators to share their products and services (in India and abroad).

The App Association emphasises that mandates to localise manufacturing processes, requiring use of indigenous software in manufacturing design processes, preferring domestic products and services with domestically-owned intellectual property rights (IPR) in the procurement by government agencies, especially for the procurement of security-related products, among other discriminatory measures, make it difficult, if not impossible, for innovators to access and leverage global hardware and software development chains, putting Indian manufacturers and Indian consumers at a significant disadvantage. Such mandates ultimately lead to a lack of market choice and reduce the number of ways our members' innovations can provide new efficiencies and solutions to end users, also increasing prices for consumers; we therefore strongly urge DOT to ensure that a new Indian telecommunications framework avoids any such requirements.

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[3] https://actonline.org/global-appcon22-competition-and-privacy/.

Moving forward, the App Association commits to work with DOT to help shape policies that promote IoT growth across all sectors of the Indian economy.

Building on the above, the App Association offers the following specific recommendations on issues and areas raised in DOT's consultation:

- The App Association supports DOT's recommendation that India's new telecommunications framework be "future-ready" and in alignment with global best practices. The new framework can primarily be future proofed via setting policy goals that are outcome based and technology neutral. Further, the new policy framework should indeed align with global best practices; as one example, India's new telecommunications framework can advance telecommunications security interests most effectively by aligning with the Common Criteria for Information Technology Security Evaluation.[4]
- The App Association agrees with DOT's proposal to prioritise simplifying its new framework, including through consolidating provisions and authorities, and ensuring duplicative and contradicting language is addressed. We further support DOT's proposed approach of minimising policy disruptions by providing for continuation of rules, guidelines, and administrative orders issued under the existing regime until superseded by new rules.
- The App Association supports a new Indian framework advancing each of the priorities articulated by DOT in 16a-16c in its Consultation Paper. A new Indian telecommunications framework for India should embrace every opportunity for the most efficient use of spectrum bands, which must include a mix of both licenced and unlicenced allowances (and sharing arrangements within the same bands for licenced and unlicenced uses that take responsible measures to avoid harmful interference).
- The App Association supports DOT's recommendation that a new Indian telecommunications framework improve the ability to obtain right of way in a uniform, non-discriminatory manner for establishment of telecommunication infrastructure. DOT is also encouraged to include a "dig once" policy under this prong of a new framework, which would require the consideration of including broadband in other infrastructure projects (electric, road, water, etc.).[5]
- The App Association appreciates DOT identifying the need to improve the process for or mergers, demergers, and acquisitions, or other forms of restructuring. We strongly urge a new telecommunications framework to ensure that it does not create new or separate antitrust policy from that under the Companies Act of 2013, and appreciate DOT's support for allowing for any licencee or registered entity to comply with the scheme for restructuring as provided under the Companies Act of 2013, after which that party would inform the DOT, as required.

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[4] https://www.commoncriteriaportal.org/.

[5] https://www.ncbroadband.gov/technical-assistance/playbook/policy-broadband/dig-once-policies.

The App Association notes that success for a startup or small business can take a variety of forms, including being purchased by a larger company that may have the resources and added expertise to enhance the product and/or bring the product to market for customers. Frequently, small businesses and startups are founded with the expectation that when their idea's potential has been sufficiently developed and demonstrated, the business will be acquired. Such an acquisition connects entrepreneurs to the scale and resources needed to develop their innovation to its full potential. Such an acquisition also allows the creative minds behind these new technologies to move on to develop new businesses, equipped with the additional skills and resources from the successful exit. The Indian economy and consumers have benefited tremendously from the creativity of individuals when combined with the resources and institutional knowledge of businesses that acquire their innovations. A merger that helps produce better products or services for consumers is both a natural and beneficial end for some companies and is healthy from a competition policy perspective, a fact that existing merger enforcement guidance reflects. Any updates to Indian law with respect to merger enforcement therefore stand to deeply impact our dynamic communities and how they realise success.

While, from time to time, it may be necessary to update merger/acquisition laws, Indian policymakers must inform any updates made to the merger guidelines by an objective data-driven evidence base and avoid making policy-level decisions based on edge-use cases and hypotheticals. DOT and other Indian policymakers should be mindful to avoid framing mergers, especially vertical integrations, as inherently anticompetitive or as innately having a negative effect on consumers. Such assumptions stand in stark contrast to both objective evidence and the experiences of those we work with, and we strongly urge Indian policymakers to base next steps on empirical evidence and existing caselaw precedent.

We also strongly discourage India from developing industry- or sector-specific merger enforcement guidance. To date, the flexible and industry-agnostic approach of antitrust law concepts has proven effective in providing fairness and consistency in antitrust law enforcement. There would be substantial risks and unintended consequences associated with disparate treatment among industries if Indian policymakers were to carve out exemptions or specifically target certain sectors of the economy. Today's time-tested, flexible, industry-agnostic merger enforcement guidance is far superior in addressing unique and challenging use cases, promotes a harmonised and predictable legal and business environment, and will be more able to keep pace with changes to the marketplace brought on by technological advancements that cannot be anticipated. For example, differences in terminology between how phrases are used in commerce and how phrases are used in static industry-specific merger guidance will inevitably diverge, leading to an inconsistent application of antitrust law that would deter beneficial mergers and acquisitions.

If merger/acquisition policy is changed in India, we urge a light touch approach and advocate for careful and targeted improvements to be made to existing guidelines, consistent with the above. Any revisions to today's merger enforcement guidelines must retain rigorous economic analysis as a cornerstone of any review or enforcement. Economic analysis provides a transparent and objective method of evaluation in enforcements and allows businesses to predict when their actions will and will not create antitrust enforcement concerns. Reducing the role of or removing economic analysis from the merger guidelines would create uncertainty for businesses, disrupting legal and business certainties and limiting the ability of the innovative companies we represent to attain success through pro-competitive mergers.

- The App Association supports DOT's proposal to overhaul its Universal Service Obligation Fund (USOF) to ensure that India's USOF delivers universal telecommunication service to underserved rural and urban areas, advances the research and development of new technologies, and promotes employment and training activities. However, the App Association cautions DOT against pursuing the expansion of the contribution base of the USOF in India. The imposition of USOF fees, levies, or taxes on small business over-the-top (OTT) innovators will negatively impact the ability to provide OTT services globally, takes away from resources dedicated to investment in these services and their delivery, and can represent insurmountable barriers to market entry for small businesses. For OTT application and service providers to grow and create jobs, they must expand to new customers across the global digital economy. Targeted fees and other trade barriers can pose legal liability concerns that jeopardise the ability of startups and small businesses to reach a global scale, resulting in reduced availability and higher prices for the consumer. OTT providers already bear significant costs to ensure content delivery networks can provide their application or service. Not only do OTT services stimulate telecommunications network growth, increase demand for data uptake, and drive the need for bandwidth, but they also help reduce consumer costs.

- The App Association also supports DOT's proposed prioritisation for standards, public safety, and national security in a new Indian telecommunications framework. We strongly encourage alignment with international standards and best practices for telecommunications security and supply chain integrity, and for the avoidance of measures or requirements that mandate localising manufacturing processes; require the use of indigenous software in manufacturing design processes; prefer domestic products and services with domestically owned IPR in the procurement by government agencies, especially for the procurement of security-related products; and other discriminatory measures that suppress competition and innovation.

  Within this pillar of DOT's approach to a new Indian telecommunications framework, we encourage reframed scoping to ensure that standards use and access is possible for all innovators. Today, holders of standard-essential patents (SEPs) in key telecommunications standards routinely abuse their dominant gatekeeper position to those seeking reasonable SEP licences needed simply to build standardised technologies into their products. To avoid this abuse and enable IoT growth and innovation in India, the App Association strongly supports the development of an Indian policy framework to clarify the obligations of SEP holders who commit to licence on fair, reasonable, and non-discriminatory (FRAND) terms. FRAND commitments increase competition by reducing intellectual property (IP) abuse as well as unnecessary and burdensome litigation. We strongly urge India's new telecommunications framework to reflect basic principles that underlie the FRAND commitment, promote procompetitive technical standard-setting processes, and ensure terms of SEP licences are reasonable. Such a policy should reflect, and enable standard-setting organisations (SSOs) to clarify in their own patent policies, all the following principles, which prevent SEP holder anti-competitive abuses:

- Patents provide a clear and powerful incentive for innovation and continue to play an important role in driving competition and economic growth.
- Standards provide the foundation for the entire internet ecosystem and are a critical enabler of innovative startups and small and medium-sized firms.
- Holders of patented technologies that are essential to a standard may voluntarily commit to licence such patents on FRAND terms, which allows SEP holders to obtain fair and reasonable royalties from a large body of standard implementers.
- Companies that voluntarily participate in standards bodies and choose to commit their patents to a standard under FRAND terms must uphold their promises.
- A commitment to FRAND patent licensing is a broad commitment that means:
    - **Fair and Reasonable to All** – A holder of a SEP subject to a FRAND commitment must licence such SEP on fair, reasonable, and nondiscriminatory terms to all willing licencees, who implement or wish to implement the standard regardless of where they sit in the supply chain.
    - **Injunctions Available Only in Exceptionally Limited Circumstances** – SEP holders should not be allowed to pursue injunctions and other exclusionary remedies, except in limited circumstances. An implementer or licencee may assert a claim or defence against a licensor in good faith.
    - **FRAND Promise Extends if Transferred** – If a FRAND-encumbered SEP is transferred, the FRAND commitments follow the SEP in that and all subsequent transfers.
    - **No Forced Licensing** – While some licencees may wish to get broader licences, the patent holder should not require implementers to take or grant licences to a FRAND-encumbered SEP that is invalid, unenforceable, not infringed, or nonessential to a standard.

- **FRAND Royalties** – A reasonable rate for a valid, infringed, and enforceable FRAND-encumbered SEP should be based on several factors, including the value of the actual patented invention apart from its inclusion in the standard, and cannot be assessed in a vacuum that ignores the portion in which the SEP is substantially practiced or royalty rates from other SEPs required to implement the standard.

The App Association appreciates the opportunity to share its views with DOT and looks forward to assisting DOT in the development of a new Indian telecommunications framework.

Sincerely,

Brian Scarpelli
Senior Global Policy Counsel

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Ref.: ICEA/DoT/2022/230
August 31, 2022

Shri Naveen Kumar
Director (Restg.)
Department of Telecommunications
Government of India
New Delhi

Subject: ICEA Submission on the Consultation Paper on 'Need for a new legal framework governing Telecommunication in India'

Dear Shri Naveen Kumar,

ICEA welcomes the opportunity provided by the Department of Telecommunications ("***DoT***") to comment on its Consultation Paper on the '*Need for a new legal framework governing Telecommunications in India*'[1] ("***Consultation Paper***") issued on 23rd July, 2022 for public consultation. The Consultation Paper proposes to establish an enabling future ready framework for the development of the telecommunication sector and deployment of new technologies in India.

We commend the DoT for taking the initiative to commence discussions on the planning and eventual defining of strategic goals, priorities and framework in the telecom sector that will enable the digital society of the future and ultimately benefit both Indian citizens and businesses.

We would like to thank the DoT for this opportunity and would like to bring forward the following comments and recommendations in relation to some of the subjects discussed in the Consultation Paper and the corresponding concerns that the industry is currently facing:

A. **Spectrum Management**

1. A world-class digital infrastructure will require that the radio spectrum is managed in an efficient and effective way. An essential element of the future gigabit network that needs particular consideration is the final link that connects the user to the access network. It is imperative that this final link is strong so that the network is also strong.

2. Telecommunications, and spectrum in particular, has been recognized as an important tool for socio-economic development of a nation. It is one of the prime support services needed for rapid growth and modernization of various sectors of the economy. Spectrum is one of the most important and crucial ingredients for wireless communication services. Accordingly, instead of auctioning spectrum in an oligopolistic market, the DoT should consider increasing 'access' for the benefit of the public, instead of concentrating power in a few hands.

3. We recommend that when defining its mobile strategy, DoT could perhaps take into account the important role of licence-exempt technologies, specifically technologies like

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[1] Available at - https://dot.gov.in/sites/default/files/Consultation%20Paper%20and%20Notice.pdf?download=1

Wi-Fi which is playing a key role in providing connectivity for mobile devices. When assessing the future demand for mobile spectrum the needs of consumers and businesses for local connectivity must be carefully considered.

4. As far as providing access to spectrum is concerned, we note that the DoT proceeds with auctions (4G, 5G) and administrative allocations (E-band). However, this approach tends to leave out the spectrum requirements for other players in the industry since the needs of telecom licensees/telecom service providers is given precedence over and above the needs of other relevant stakeholders in the industry. New technological developments and global trends in IoT, Short Range Devices, Wi-Fi, etc. also need to be taken into consideration for the advancement of the industry and to ultimately bring technological benefits to its citizens.

5. For proper inclusion of all players, and optimum utilization of this scarce resource, *i.e.* radio frequency spectrum, DoT may consider introducing a formalised and institutionalised process to look at and analyse requirements for all kinds of the spectrum (besides the licensed spectrum viz. 5G, etc.) while taking into consideration technological advances, global trends and harmonisation. Delay in allocating spectrum for non-carrier related spectrum needs tends to hamper the progress of the Indian electronic industry in terms of testing, bringing new products and meeting the market needs both domestic and exports as well as depriving Indian consumers of the best wireless technology innovations.

6. The relevant authorities may consider making arrangements for reallocating and repurposing some spectrum bands to create spectrum sharing opportunities which would eventually enable stakeholders as well as policy makers to understand spectrum efficiency and would make spectrum allocation effective

7. Given that a lot of coordination between TRAI and DoT is required to undertake consultations, empowering TRAI to *suo moto* take spectrum consultations for areas that lie beyond spectrum needed by Service Providers may also be considered.

8. Further, the DoT may expeditiously look into/evaluate de-licensed spectrum requirements with a strong legal footing and send references on de-licensed spectrum to TRAI based on its own assessment and/or requests from the industry.

B. Penalty

1. The existing Acts/Rules/regulations governing the telecommunication space in the country prescribe penal sanctions in cases of non-compliance. In the interest of clarity, incentivisation of regulatory compliances and ease of doing business, it is recommended that the DoT undertake a whole-of-government exercise to identify all laws and policies/guidelines/instructions applicable to the telecommunication sector to introduce proportionality-based penalty schemes involving fines and liquidated damages. This penalty system would be based on differential fine based on the gravity of the violation. Penalties should be reduced and may not be applied during certain stages such as the testing phase, software upgrades, database clean up, etc. Similar categories of errors, such as malfunction of software application and database structure/corruption, may be clubbed

and viewed as one instance as opposed to multiple minor violations. Harsh penalties, such as cancellation of licenses/registrations, may be exercised as a last-resort for instances of non-compliance.

2. The cost of regulatory compliance may tend to overburden organizations to the extent that fear of making mistakes hamper genuine business growth and investments. This is especially true in the present global climate where multi-national organizations are looking for diversifying their supply chain and with the right investment climate. Industries with heavy capital requirements tend to veer towards countries where there are simplified, minimal and streamlined compliance regimes. Accordingly, the DoT may consider using positive re-enforcement as a regulatory strategy by adopting the 'Stick and Carrot' approach. Not only should it consider rewarding OEMs and other stakeholders for adhering to the guidelines but also improve the overall compliance environment in the industry by encouraging non-compliant organizations to move to the compliance regime voluntarily and lead to a trust-based relationship between the enforcer and complaint organisations.

3. Integration of precise timelines on portals and compliance checklists can assist relevant authorities in assessing the extent of compliance by applicants and allow for faster approvals for entities that are compliant with the respective requirements as demarcated. Other benefits, such as charging a lower rate of physical inspections of the imported/exported goods, faster release of shipments, and deferred payment of duties, may be considered to encourage applicants to meet the compliance criteria and demonstrate the security of the supply chain.

C. Standards, Public Safety and National Security

1. Global Standards

(i) India should continue to adopt global standards for upcoming technologies for the benefit of its citizens.

(ii) Adopting global standards will help Indian manufacturers to bring Indian products and solutions to the global market. This will help fragmentation in catering to one standard for the Indian market and the other to bring products to other countries. DoT is recommended to encourage Indian R&D institutes, universities and start-ups to contribute to international standards *viz* 3GPP, IEEE, etc. and avoid new standards that would have limited acceptability in the global space.

(iii) When adopting global standards, there should not be tweaking of the standards. Rather unique Indian requirements and solutions may be explored within the framework of the global standards.

(iv) It is important that the competence and impartiality of conformity assessment bodies are independently evaluated and verified against recognised international standards by accreditation bodies. Such conformity assessment bodies can be in a country with whom the Government of India can enter into an agreement for reciprocal acceptance of reports by Indian conformity assessment bodies (MRA-ILAC). A standard procedure for accepting reports prepared by such assessment bodies may be devised in order to ease the process and provide a single uniform standard for assessment.

2. Treatment of Consumer electronic products

(i) Consumer electronic products are different from Core telecom products and solutions like Packet Core, Radio Base Stations, Microwave, Internet Gateways, Routers, Switches, etc. Consumer products have

- Unique requirements
- Shelf life
- Supply chain logistics
- Clientele and End users
- Marketing and Sales channels
- Procurement and Purchase channels
- Product lifecycle (Both Hardware and Software)
- Fast faced innovations

and need special treatment whenever telecom Acts and rules are framed and updated. Many end-consumer products and solutions are getting integrated with the internet like, Autonomous and Self-driven Cars, Smart ACs, Smart Fridges and the like. These products along with Smart Phones etc. cannot be expected to be subject to the same telecom rules and testing as the Core telecom equipment which forms an integral part of a telecom/mobile network. The new Telecom framework needs to consider this important class of end-user products.

(ii) Currently, the wide definition of 'telegraph' under the Indian Telegraph Act, 1885 brings ICT equipment and various consumer electronic products within the ambit of telecom and telecom equipment related regulations. Hence, in order to restrict the scope of telecom regulations vis-à-vis consumer electronic products it is recommended that the DoT in consultation with relevant stakeholders narrow down the scope and application of the relevant telecom equipment related regulations in a way that is specifically tailored towards regulating only core telecom products.

3. Bolstering industry consultation prior to policy implementations

(i) The regulatory dispensation in testing and certification undertaken by TEC under its MTCTE certification has been subject to frequent changes which have been undertaken without adequate industry consultation. Such frequent changes have a detrimental impact on the business climate and project India in an unfavourable light as far as global trade and the international business community is concerned.

(ii) As seen from the MTCTE example, consultations have usually taken place with the industry post announcements and notification of the phases of MTCTE and proper consultation was not undertaken during the formulation of the MTCTE. Measures undertaken by TEC need to be in sync with the government's overall thrust on Ease of

Doing Business in the country for TEC to act as an enabler for telecom standards and technologies as it has always been doing and not take measures that can be an impediment to business continuity and the economy. The recent DoT notification[2] (*S.O. 2372(E) issued on 24th May 2022)* on removing several consumer products from the scope of MTCTE is a step in the right direction that greatly improves the business environment. DoT should ensure that all organisations under its ambit, like the TEC, undertake mandatory public consultation with the relevant stakeholders before issuing any regulations.

D. Other Measures to foster Ease of Doing Business (EoDB)

1. The upcoming legal framework should have enough measures to ensure flexibility to learn and implement from the good practices from other regulatory regimes as well as business friendly measures initiated and implemented by other government ministries/agencies.

2. To cite an example, the Customs department has the Authorised Economic Operator (AEO) program. This program enables the Customs department to identify the safe and compliant business entity in order to provide them a higher degree of assured facilitation. This segmentation approach enables the Custom department's resources to focus on less or non-compliant or risky businesses for control. This approach and/or similar approach can be explored for issuing WPC ETA certifications for de-licensed wireless products on self-certification basis.

3. The proposed framework also needs to ensure prevention of sensitive business information that is shared with the regulator for certification purposes before the official launch of the products in the market. In an era of hyper competitiveness, OEMs would desire that such information is not available to the competition before they bring such products/solutions to the market.

4. A "Deemed Approval" system may also be considered by the DoT which provides the relevant authority a specified period of time to scrutinise and clear the application of the applicant, and beyond this period, unless the regulatory authority objects, the application shall be deemed approved.

5. At present, products manufactured by OEMs are subject to rules and regulations issued by various departments and ministries including safety standard certifications, telecom equipment certifications, radio frequency related approvals, etc. This increases compliance burden on OEMs as they are required to follow varying procedures and timelines prescribed under various regulations simultaneously. There is a need to ensure convergence for testing and certification of devices. This can be achieved through close coordination amongst the relevant authorities (such as BIS, TEC, WPC etc.).

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[2] Available at: https://www.tec.gov.in/pdf/MTCTE/Exemption%20of%20five%20items.pdf

6. Additionally, there should be consideration for allowing international lab reports to be submitted under the "converged process", given that device security and customer privacy concerns would be a relevant factor in fully opening hardware and OS/software to labs in India.

7. Another recommendation for streamlining the process would be through single agency/window testing and certifications to obviate the possibility of duplicity of testing and certification requirements. The process for seeking approvals should be streamlined in such a manner that all the applications and approvals reach the respective department/ministry for which they are meant. A single platform for completing all formalities will reduce timelines thereby making the administrative process efficient.

8. Further, in the interest of regulatory ease, it would be beneficial for those involved in the application/approval process, if reasonable timelines are set to eliminate potential overlap between the application processing requirements established by respective authorities. Any update in the process for seeking approvals should be informed to the stakeholders well in advance.

9. To undertake the task of simplification of the application/approval process and establishing an efficient decision-making process as mentioned above, a "Regulations Review Authority" may be set up after every 5 years to review and streamline various regulatory and compliance procedures. This authority will focus on streamlining regulatory instructions, reducing compliance burden of the regulated entities by simplifying procedures and reducing reporting requirements, wherever possible. Such an authority will also have the responsibility to ensure that regulatory stability and transparency is maintained because this would have a direct bearing on the stakeholders' planning and investment choices.

We are hopeful that the comments that we have provided on the Consultation Paper are carefully considered and taken on board by the DoT. We remain available for any further discussion / information at DoT's request.

With my best regards,

Pankaj Mohindroo

Email **Naveen Kumar**

AMCHAM India : Submission on the Consultation Paper on 'Need for a new legal framework governing Telecommunication in India'

From : rajiv anand <rajiv.anand@amchamindia.com> Thu, Sep 01, 2022 01:30 PM

Subject : AMCHAM India : Submission on the Consultation Paper on 'Need for a new legal framework governing Telecommunication in India' 1 attachment

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Mr. Naveen Kumar
Joint Secretary
Department of Communications
Ministry of Communications
Government of India

AMCHAM Submission on the Consultation Paper on 'Need for a new legal framework governing Telecommunication in India'

Dear Mr. Kumar,

Greetings from the American Chamber of Commerce in India (AMCHAM), the apex chamber of U.S. companies operating in India!

We welcome the opportunity provided by the Department of Telecommunications ("***DoT***") to comment on its Consultation Paper on the '*Need for a new legal framework governing Telecommunications in India*'[1] ("***Consultation Paper***") issued on 23rd July, 2022 for public consultation. The Consultation Paper proposes to establish an enabling future ready framework for the development of the telecommunication sector and deployment of new technologies in India.

We commend the DoT for taking the initiative to commence discussions on the planning and eventual defining of strategic goals, priorities and framework in the telecom sector that will enable the digital society of the future and ultimately benefit both Indian citizens and businesses.

We would like to thank the DoT for this opportunity and would like to bring forward the following comments and request from our US industry members in relation to some of the subjects discussed in the Consultation Paper and the corresponding concerns that the industry is currently facing:

A. Spectrum Management

1. A world-class digital infrastructure will require that the radio spectrum is managed in an efficient and effective way. An essential element of the future gigabit network that needs particular consideration is the final link that connects the user to the access network. It is imperative that this final link is strong so that the network is also strong.

2. Telecommunications, and spectrum in particular, has been recognized as an important tool for socio-economic development of a nation. It is one of the prime support services needed for rapid growth and modernization of various sectors of the economy. Spectrum is one of the most important and crucial ingredients for wireless communication services. Accordingly, instead of auctioning spectrum in an oligopolistic market, the DoT should consider increasing 'access' for the benefit of the public, instead of concentrating power in a few hands.

3. We recommend that when defining its mobile strategy, DoT could perhaps take into account the important role of licence-exempt technologies, specifically technologies like Wi-Fi which is playing a key role in providing connectivity for mobile devices. When assessing the future demand for mobile spectrum the needs of consumers and businesses for local connectivity must be carefully considered. While making a sufficient amount of spectrum available for mobile use (5G/6G) is important, the characteristics and requirements of local connectivity and other emerging use cases need to be considered as well.

4. As far as providing access to spectrum is concerned, we note that the DoT proceeds with auctions (4G, 5G) and administrative allocations (E-band). However, this approach tends to leave out the spectrum requirements for other players in the industry since the needs of telecom licensees/telecom service providers is given precedence over and above the needs of other relevant stakeholders in the industry. New technological developments and global trends in IoT, Short Range Devices, Wi-Fi, etc. also need to be taken into consideration for the advancement of the industry and to ultimately bring technological benefits to its citizens.

5. For proper inclusion of all players, and optimum utilization of this scarce resource, i.e. radio frequency spectrum, DoT may consider introducing a formalised and institutionalised process to look at and analyse requirements for all kinds of the spectrum (besides the licensed spectrum viz. 5G, etc.) while taking into consideration technological advances, global trends and harmonisation. Delay in allocating spectrum for non-carrier related spectrum needs tends to hamper the progress of the Indian electronic industry in terms of testing, bringing new products and meeting the market needs both domestic and exports as well as depriving Indian consumers of the best wireless technology innovations.

6. The relevant authorities may consider making arrangements for reallocating and repurposing some spectrum bands to create spectrum sharing opportunities which would eventually enable stakeholders as well as policy makers to understand spectrum efficiency and would make spectrum allocation effective. A provision may be made for other non-telecom players, such as the OEMs that enables OEMs to offer wireless features to the users of its products and devices.

7. Given that a lot of coordination between TRAI and DoT is required to undertake consultations, empowering TRAI to suo moto take spectrum consultations for areas that lie beyond spectrum needed by Service Providers may also be considered.

8. Further, the DoT may expeditiously look into/evaluate de-licensed spectrum requirements with a strong legal footing and send references on de-licensed spectrum to TRAI based on its own assessment and/or requests from the industry.

B. Penalty

1. The existing Acts/Rules/regulations governing the telecommunication space in the country prescribe penal sanctions in cases of non-compliance. In the interest of clarity, incentivisation of regulatory compliances and ease of doing business, it is recommended that the DoT undertake a whole-of-government exercise to identify all laws and policies/guidelines/instructions applicable to the telecommunication sector to introduce proportionality-based penalty schemes involving fines and liquidated damages. This penalty system would be based on differential fine based on the gravity of the violation. Penalties should be reduced and may not be applied during certain stages such as the testing phase, software upgrades, database clean up, etc. Similar categories of errors, such as malfunction of software application and database structure/corruption, may be clubbed and viewed as one instance as opposed to multiple minor violations. Harsh penalties, such as cancellation of licenses/registrations, may be exercised as a last-resort for instances of non-compliance.

2. The cost of regulatory compliance may tend to overburden organizations to the extent that fear of making mistakes hamper genuine business growth and investments. This is especially true in the present global climate where multi-national organizations are looking for diversifying their supply chain and with the right investment climate. Industries with heavy capital requirements tend to veer towards countries where there are simplified, minimal and streamlined compliance regimes. Accordingly, the DoT may consider using positive re-enforcement as a regulatory strategy by adopting the 'Stick and Carrot' approach. Not only should it consider rewarding OEMs and other stakeholders for adhering to the guidelines but also improve the overall compliance environment in the industry by encouraging non-compliant organizations to move to the compliance regime voluntarily and lead to a trust-based relationship between the enforcer and complaint organisations.

3. Integration of precise timelines on portals and compliance checklists can assist relevant authorities in assessing the extent of compliance by applicants and allow for faster approvals for entities that are compliant with the respective requirements as demarcated. Other benefits, such as charging a lower rate of physical inspections of the imported/exported goods, faster release of shipments, and deferred payment of duties, may be considered to encourage applicants to meet the compliance criteria and demonstrate the security of the supply chain.

C. Standards, Public Safety and National Security

1. Global Standards

- India should continue to adopt global standards for upcoming technologies for the benefit of its citizens.

- Adopting global standards will help Indian manufacturers to bring Indian products and solutions to the global market. This will help fragmentation in catering to one standard for the Indian market and the other to bring products to other countries. DoT is recommended to encourage Indian R&D institutes, universities and start-ups to contribute to international standards viz 3GPP, IEEE, etc. and not develop a new standard that would have limited acceptability in the global space.

- When adopting global standards, there should not be tweaking of the standards. Rather unique Indian requirements and solutions may be explored within the framework of the global standards.

- It is important that the competence and impartiality of conformity assessment bodies are independently evaluated and verified against recognised international standards by accreditation bodies. Such conformity assessment bodies can be in a country with whom the Government of India can enter into an agreement for reciprocal acceptance of reports by Indian conformity assessment bodies (MRA-ILAC). A standard procedure for accepting reports prepared by such assessment bodies may be devised in order to ease the process and provide a single uniform standard for assessment.

2. Treatment of Consumer electronic products

a) Consumer electronic products are different from Core telecom products and solutions like Packet Core, Radio Base Stations, Microwave, Internet Gateways, Routers, Switches, etc. Consumer products have

- Unique requirements
- Shelf life
- Supply chain logistics
- Clientele and End users
- Marketing and Sales channels
- Procurement and Purchase channels
- Product lifecycle (Both Hardware and Software)
- Fast faced innovations

and need special treatment whenever telecom Acts and rules are framed and updated. Many end-consumer products and solutions are getting integrated with the internet like, Autonomous and Self-driven Cars, Smart ACs, Smart Fridges and the like. These products along with Smart Phones etc. cannot be expected to be subject to the same telecom rules and testing as the Core telecom equipment which forms an integral part of a telecom/mobile network. The new Telecom framework needs to consider this important class of end-user products.

b) Currently, the wide definition of 'telegraph' under the Indian Telegraph Act, 1885 brings ICT equipment and various consumer electronic products within the ambit of telecom and telecom equipment related regulations. Hence, in order to restrict the scope of telecom regulations vis-à-vis consumer electronic products it is recommended that the DoT in consultation with relevant stakeholders narrow down the scope and application of the relevant telecom equipment related regulations in a way that is specifically tailored towards regulating only core telecom products.

3. Bolstering industry consultation prior to policy implementations

(i) The regulatory dispensation in testing and certification undertaken by TEC under its MTCTE certification has been subject to frequent changes which have been undertaken without adequate industry consultation. Such frequent changes have a detrimental impact on the business climate and project India in an unfavourable light as far as global trade and the international business community is concerned.

(ii) As seen from the MTCTE example, consultations have usually taken place with the industry post announcements and notification of the phases of MTCTE and proper consultation was not undertaken during the formulation of the MTCTE. Measures undertaken by TEC need to be in sync with the government's overall thrust on Ease of Doing Business in the country for TEC to act as an enabler for telecom standards and technologies as it has always been doing and not take measures that can be an impediment to business continuity and the economy.

The recent DoT notification[2] (S.O. 2372(E) issued on 24th May 2022) on removing several consumer products from the scope of MTCTE is a step in the right direction that greatly improves the business environment. DoT should ensure that all organisations under its ambit, like the TEC, undertake mandatory public consultation with the relevant stakeholders before issuing any regulations.

D. Other Measures to foster Ease of Doing Business (EoDB)

1. The upcoming legal framework should have enough measures to ensure flexibility to learn and implement from the good practices from other regulatory regimes as well as business friendly measures initiated and implemented by other government ministries/agencies.

2. To cite an example, the Customs department has the Authorised Economic Operator (AEO) program. This program enables the Customs department to identify the safe and compliant business entity in order to provide them a higher degree of assured facilitation. This segmentation approach enables the Custom department's resources to focus on less or non-compliant or risky businesses for control. This approach and/or similar approach can be explored for issuing WPC ETA certifications for de-licensed wireless products on self-certification basis.

3. The proposed framework also needs to ensure prevention of sensitive business information that is shared with the regulator for certification purposes before the official launch of the products in the market. In an era of hyper competitiveness, OEMs would desire that such information is not available to the competition before they bring such products/solutions to the market.

4. A "Deemed Approval" system may also be considered by the DoT which provides the relevant authority a specified period of time to scrutinise and clear the application of the applicant, and beyond this period, unless the regulatory authority objects, the application shall be deemed approved.

5. At present, products manufactured by OEMs are subject to rules and regulations issued by various departments and ministries including safety standard certifications, telecom equipment certifications, radio frequency related approvals, etc. This increases compliance burden on OEMs as they are required to follow varying procedures and timelines prescribed under various regulations simultaneously. There is a need to ensure convergence for testing and certification of devices. This can be achieved through close coordination amongst the relevant authorities (such as BIS, TEC, WPC etc.).

6. Additionally, there should be consideration for allowing international lab reports to be submitted under the "converged process", given that device security and customer privacy concerns would be a relevant factor in fully opening hardware and OS/software to labs in India.

7. Another recommendation for streamlining the process would be through single agency/window testing and certifications to obviate the possibility of duplicity of testing and certification requirements. The process for seeking approvals should be streamlined in such a manner that all the applications and approvals reach the respective department/ministry for which they are meant. A single platform for completing all formalities will reduce timelines thereby making the administrative process efficient.

8. Further, in the interest of regulatory ease, it would be beneficial for those involved in the application/approval process, if reasonable timelines are set to eliminate potential overlap between the application processing requirements established by respective authorities. Any update in the process for seeking approvals should be informed to the stakeholders well in advance.

9. To undertake the task of simplification of the application/approval process and establishing an efficient decision-making process as mentioned above, a "Regulations Review Authority" may be set up after every 5 years to review and streamline various regulatory and compliance procedures. This authority will focus on streamlining regulatory instructions, reducing compliance burden of the regulated entities by simplifying procedures and reducing reporting requirements, wherever possible. Such an authority will also have the responsibility to ensure that regulatory stability and transparency is maintained because this would have a direct bearing on the stakeholders' planning and investment choices.

We are hopeful that the comments that we have provided on the Consultation Paper are carefully considered and taken on board by the Hon'ble DoT. We remain available for any further discussion / information at DoT's request.

Looking forward to your acceptance at your earliest convenience,

With best regards,

Regards.

Rajiv.

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[1] Available at - https://dot.gov.in/sites/default/files/Consultation%20Paper%20and%20Notice.pdf?download=1

[2] Available at: https://www.tec.gov.in/pdf/MTCTE/Exemption%20of%20five%20items.pdf

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COAI

Industry Submission To DoT

On

'Need for a New Law Governing Telecommunication in India'

1. At the outset, we sincerely express our gratitude to the Department of Telecommunications for taking an important initiative of reviewing the existing legal and regulatory provisions governing the telecommunication sector in India and issuing such an important consultation paper and for inviting comments on the Consultation Paper from the stakeholders for the purpose of laying the foundation of a new legal and regulatory framework for the fastest growing telecommunication and digital communication sector in India. We completely agree with the vision of the Department that India needs a new law which is clear, precise, and attuned to the realities of the sector for realizing the potential of telecommunication.

2. Telecom industry has put in substantial investments and all future generations of technologies and spectrum require continuous investment. Therefore, a holistic legal framework that reflects the changing digital landscape while reducing costs and barriers to network creation, deployment and expansion will deliver the best outcome for both the economy and society at large.

3. The Consultation Paper rightly notes many leading Telecommunications markets like the UK, Australia and the US have all continuously evolved and reformed their Telecom Acts in last 2-3 decades. This is the need of the hour, especially in light of the dynamic changes in technology and digital world.

4. We believe that while drafting the proposed Telecom Law, certain principles need to be followed so that the outcome document is comprehensive, forward looking and also caters for the growth of the entire sector, while taking care of due safeguards. These broad principles are:

    a. Support financial sustainability of the industry to build and invest in network infrastructure.

    b. Regulatory Impact Assessment (RIA) before and for every regulatory intervention should be included.

    c. Law should be future proof, bring regulatory certainty and be applied prospectively.

d. Law should be forward looking and should address the needs of convergence of various digital services including telecommunication connectivity, carriage of broadcasting content, Over The Top communication services that are provided using any technology/network be it terrestrial or non-terrestrials networks including satellite based communication networks.

e. Law should foster efficiency, transparency, inclusiveness, regulatory certainty and eliminate the concept of discretionary powers.

f. Align with global best practices and the best global regulatory regimes.

g. To ensure long-term Regulatory Certainty and a level playing field for orderly growth of the sectors, it must have proper checks and balances and not give unbridled power to the executives.

5. We, therefore, submit that the outcome of this Consultation Process should result in developing of converged law and regulation for telecommunications (both terrestrial and satellite communication), broadcasting and IT and shall also address the legal and regulatory issues related to data privacy and related security issues.

6. Further, we submit that for consolidating inputs of the stakeholders in a comprehensive and specific manner, DoT should release 'draft bill' for the proposed law and invite comments of the all stakeholders, before finalising the new legal framework.

7. In light of the above broad principles, we would like to submit the following issues that need to be considered while framing the new legal framework:

A. **Ensure level playing field, certainty and apply the law prospectively:** As stated above, the technology and digital landscape of the sector is extremely dynamic. Therefore, the law should be future proof, as far as possible, to meet future requirements of rapidly changing technologies and industry dynamics including investments.

There is a need to ensure level playing field among all technologies e.g., Same Service Same Rules with respect to OTT Communication Services. Also, while allocating spectrum or introducing new services or licensing regimes, it needs to be ensured that similarly placed players are treated in a similar manner. While the industry is in favour of adoption of new technologies and services by various players, it is important to ensure that the level playing field amongst the players in not skewed. Current TSPs have made considerable investments based on present law, any change to a new framework, the existing businesses of TSPs should not be adversely impacted. Hence, the new law should be applied prospectively only.

B. **Regulatory Impact Assessment (RIA):** India should adopt best practices around regulatory impact assessment or RIA as followed by world's leading regulators e.g., OFCOM in UK.

Regulatory impact assessment (RIA) involves carefully assessing the positive and negative impact of any proposed regulation. This assessment can also be carried out on existing regulations. The approach involves assessing the economic cost of implementing a regulation vis-à-vis the benefit which will accrue from the regulation. Thus, Regulatory impact assessment (RIA) offers the means to improve regulatory decision-making.

All Regulations/instructions/ Compliance Orders issues by the Government, DoT, Regulator should be issued only after undertaking a detailed cost-benefit analysis; and the Orders/Instructions should be implemented only if the benefits far outweigh the costs of implementation. All policy, and regulatory decisions and interventions should be based on RIA and the RIA must be made part under the new law.

C. **Convergence in technologies and platforms to be considered:** The lines between broadcasting and telecom networks are fast disappearing with digital technologies evolving at a breakneck speed. These two platforms are increasingly complementing each other with the growing adoption of high-speed broadband networks and consumers are demanding the same content experience (OTT + Linear) across all screens – smartphone, TV and PC – and looking for bundled services (both data/broadband and cable/DTH services under one offer) to fulfill their needs.

Over the years, communications infrastructure has evolved from circuit-based networks, in which individual applications (such as voice telephony) are tightly coupled to the transmission network, to Internet Protocol ('IP') networks, in which multiple applications ride on top of the physical (transmission) network layer. Deployment of digital technologies has led to market convergence and 'intermodal' competition, as telephone, cable, broadcasting, wireless networks and OTT applications increasingly are able to offer voice, data, and video services over a single broadband platform using or without using the spectrum.

The advent of Edge computing, Cloud based services etc., and leveraging Artificial Intelligence and Big Data for providing newer services is leading to more and more convergence. Such convergence is also creating pressing need for uniform policies from a data security policy perspective and cooperation with Law Enforcement Agencies ('LEAs'), among others.

Thus, we believe that this is an opportune time for a comprehensive legal framework which shall aid in the development of new technologies in a converged era to boost investor confidence. The alignment with global best practices & simplification of the regulatory framework will also aid in further improvement of regulatory certainty and protect huge investments made by several stakeholders in India.

D. **Simplification and alignment of approval process with NCLT proceedings regarding M&A:** While DoT is a part of the NCLT process and actively participates in the whole process, the applicant/petitioner companies are still required to approach DoT for approval of the demerger/merger of licences or telecom business on record. The NCLT proceedings itself take at least 8-12 months and the approval from DoT thereafter also take 2-4 months, leading to a total time frame of 10-16 months for the demerger/merger to be completed. This results in significant loss of time and value to the merging entities. Since DoT is already a part of the NCLT merger proceedings, the merging entities should not be required to approach DoT separately for its approval and the approval of DoT should be a part of the NCLT merger/demerger process and therefore all licenses and resources should be transferred without any delay to the new entity without any further application or request to DoT.

E. **Review of Penalty Scheme:** The current licensing framework has prescribed the penalty in case of any non-compliance at a maximum of Rs. 50 Crore without getting into the proportionality and genesis of such non-compliance and its possible ramifications. It is important to assess the severity of the incident before imposition of financial penalty. Any concerns or issues that arise in this regard should be examined on merits and imposition of any financial penalty should be considered only when it is clearly established without doubt that there is wilful conduct for the purpose of non-compliance on the part of the licensee.

TRAI in its Recommendations on 'Inputs for Formulation of National Telecom Policy-2018 dated February 2, 2018 and on 'Ease of Doing Business' dated 30th November 2017 had recommended the review of penalty provisions in the licenses to ensure that these provisions are commensurate with the level of violation or shortcomings. Whether the violation was restricted to a single service area or was committed across all service areas/licenses. Also in the Policy roadmap document, i.e., the NDCP-2018 has a provision to review the penalty provisions to ensure proportionality and reasonableness.

There is also a need to have an appellate process which will not only ensure a uniform and consistent approach across all LSAs but will also be in consonance with the maker-checker principle.

The new law should enable penalty provisions that should commensurate with the violation and be proportionate; and a graded penalty matrix should be devised in consultation with the Industry. This will also reduce the litigations in the sector and boost the confidence of the investors in the sector.

F. **Recover only the cost of administering a resource:** Despite being a pivotal contributor to the economy's growth, Telecom sector remains to be most heavily taxed sector amongst Asian countries. The regulatory levies paid by the TSPs is adding significant financial burden to the sector. Currently, the total License Fee (LF) having rate of 8% of AGR is uniformly applicable to all licensees, of which 5% goes to the USO fund and the remaining 3% is levied as License Fee (LF).

Many advanced regulatory regimes recover only the cost of administering a resource e.g. OFCOM in UK (UK Telecom Act 2003), and FCC in the USA, and Australia. Thus, India's new law too should align to such global best practices.

Further, time has come to end the USO levy since private sector has been instrumental in achieving the objectives of rural connectivity over the years by constantly rolling out telecom networks in rural and unconnected areas.

The rural tele-density has exceeded and surpassed the objectives laid down under successive telecom policies, whereas the operators are still being subjected to an ever-increasing heavy burden of contributions to USO fund with the same percentage of Adjusted Gross Revenues. Removal of USO levy will act as an incentive for TSPs to rollout more networks in underserved and unserved areas thereby increasing their revenues resulting in an overall increase in the exchequer revenue.

However, if it is decided to continue with the USO levy, then the new Act should expand the contributing entities. Therefore, the new law should either abolish or freeze the levy for the next few years (at least 5 years) until the current available funds are exhausted effectively. It can then be restarted with a significantly lower rate and with increased number of contributing entities.

Further **License Fee should be charged only for the administrative expenses:** The existing regime is in line with the process of administrative allocation of spectrum where the spectrum was allocated along with the license. Currently, the spectrum is being allocated using spectrum auction process for which the TSP's have to make a significant payment.

Reduction in License fee is necessary to facilitate Investments required to complete the Digital India Vision & 5G Roll-outs: According to a report by Motilal Oswal Financial Services, investments in key components of 5G network on mid or low-band spectrum with pan-India coverage is estimated to be about **Rs 1.3-2.3 lakh crore**. Hence, it is vital to ensure that the telecom industry remains financially strong and there is an urgent need to reduce the burden of levies on the sector.

We thus request that License fee should be charged only towards the administrative expenses and be brought down from present 3% to 0.5 – 1% of the AGR.

There is a need to rationalise the definition of AGR. In order to allow TSPs to undertake licensed and non-licensed activities without any impediment, the following definition of Gross Revenue is suggested:

> *"The Gross Revenue shall include revenue received directly from customer for providing services which can only be provided under a License issued under Indian Telegraph Act, 1885."*

However, if the Government believes that existing definition of Gross Revenue/AGR should continue, then the exclusion list from Gross Revenue to arrive at ApGR should be notified and updated from time to time. Income items like revenue from capital receipts, reimbursement of expenditure made on behalf of third parties, gain / loss arising on any business arrangement viz. merger, slump-sale, notional revenue should be in exclusion list to arrive at ApGR.

G. **Cost Sharing Amongst Various User Departments for Security requirements:** TSPs have been at the forefront of ensuring that they comply with the requirements laid down by the law enforcement agencies, and any new additional requirements put up by such agencies.

However, such demands from LEAs are increasing exponentially, putting substantial cost and investment burden only on the TSPs. It is thus pertinent that the new Act should put in place a cost-sharing mechanism between TSPs and LEA/user government departments. Maintaining national security is a collective effort of all the user departments, hence, it is only fair that the cost of maintaining this is also shared amongst all such providers and user departments. Such an approach is followed in other jurisdictions as well e.g., Australia and United Kingdom.

H. **Illegal possession and use of telegraph should be non bailable and cognizable offence:** To mitigate issues related to interference, the new Act should declare the use of illegal SIM boxes / repeaters / jammers as a non-bailable and cognisable offence. It is seen that the present provisions are not acting as a deterrent to people in possession of such equipment.

Any damage / vandalism of telegraph apparatus or site or any physical telegraph apparatus should be classified as a non-bailable and cognisable offence. Further, a provision should be proposed in the Act that any/all authorities and agencies (e.g., civil, utility) whose work may have a bearing on a Telegraph asset (e.g., Fiber/ Tower) must mandatorily give an advance notice of 30 days before commencing the work on the route so that TSPs / IP1s can make appropriate arrangements of any damage, cuts, etc. In the absence of such timely and appropriate notice, the agency/authority/entity must compensate for the damage and loss caused to the TSP and/or IP1.

I. **Court Appearance and deposing of evidence, U/s 65(b) of the Indian Evidence Act, 1872, by TSP Nodal officers and Alternate Nodal Officers:** It is mandated for TSPs to provide the CDR/SDR/CAF data to the designated LEAs / Competent authorities as per their requirement under Section 91 of Cr PC. Whenever the LEAs/ Competent Authorities requires to use such CDR/SDR/ CAF data as evidence, then they seek the certified copies of the said data – certified under Section 65 (B) of the Evidence Act 1872. This data is then provided to the LEAs / Competent authorities after due certification by the Circle Nodal Officer / Alternate Circle Nodal Officer of the TSP.

Accordingly, when the case is posted for hearing in a court of Law (where such data is being used as evidence), the respective "Circle Nodal Officer / Alternate Circle Nodal

Officer" of the TSP is called upon to appear in person in the Court as a prosecution witness for deposing the evidence in respect of the certified copies of the data provided earlier. These increasingly large volume of court cases and summons are impairing the effectiveness of other activities and responsibilities of the Nodal Officers – which he is required to carry out in his normal day to day operations. The considerable amount of time spent on attending to this critical court related work and extensive travel involved in attending to various courts spread across the various Geographical areas, is often very stressful for the Nodal Officers –which can often have bearing on their wellbeing and health related issues also.

In this regard we would like to bring to your kind notice that, a convenient provision as has been incorporated vide the amendment to the "Bankers Book Evidence Act 1891", which lays down that the bank authorities are only required to provide a certificate for the data provided by them, as mentioned vide Sec 2-A of the Act. Also, as per Sec 5 of the ibid act, the Bank authority shall not be called to the court until and unless by the order of court of judge, for a special cause. The content of the section 5 is reproduced below for your ready reference –

> ***"5. Case in which officer of bank not compellable to produce books.***—*No officer of a bank shall in any legal proceeding to which the bank is not a party be compellable to produce any banker's book the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the Court or a Judge made for special cause."*

> *The Banking Regulator "Reserve Bank of India" has also issued an advisory dt. April 24, 2009, for all the banks to provide only the Certified copies and computer Printouts as per the Bankers' Books Evidence Act, 1891.*

The new Act should include a clause in line with the "Bankers Book Evidence Act 1891" for acceptance of the Certified Copies of the CDR /SDR Data as evidence and doing away with the requirement of the Nodal Officers to appear in the court, in person, for deposing of evidencing of CDR/SDR data.

J. **RoW Rules to be enforced legally:** While the government has sought to address complex and expensive RoW approvals via RoW Rules 2016 and amendments thereof and bringing under the PM Gati Shakti plan through the Sugam Sanchar portal, on ground challenges still remain specially on the RoW related charges.

a. **Enforceability by Legal backing for RoW Rules 2016 & amendments thereof:** All the policies for ensuring and delivering Critical Telecom Infrastructure (CTI) should be uniformly implemented across entire country and should be backed by Act of Parliament as only Acts and Rules under the Act are enforceable, and guidelines seldom have the desired impact. Further, as a first step all central ministries should be mandated to comply with RoW Rules 2016. All the changes required as given in succeeding sub-paras should be brought in through Act of Parliament to make them enforceable across the country. b. RoW charges w.r.t deployment of the fibre must be consistent and commensurate only with the restoration charges to ensure the viability and affordability of services. Since fiber connectivity needs to proliferate with greater speeds, it is also important that the decision to lay fiber is given in a time-bound manner.

b. **Removal of Concept of Compensation:**

i. The concept of compensation for use of land in connection with the grant of RoW rights should be done away with as utility of land is in no way adversely affected owing the to grant of RoW for Underground Cable (UGC).

ii. The RoW essentially leads to delivery of public services and greater common good for populace, therefore it should be always free on public land. At most there can be a nominal administrative charge.

iii. The concept of calculating formula-based land use for OFC cables should be done away with and the RoW area for erecting Mobile Towers should be the area of the mobile tower on the surface of the ground and supporting infrastructures only.

iv. A directive should be issued to ensure that there is no application fee or compensation or recurring charges for poles for Overground OFC lines.

c. Uniform Provisions and Charges w.r.t deployment of Small Cells and Aerial fibre by using the Street Furniture of the Central, State Government and Local bodies need to be prescribed.

d. Safety and Security of the Telecom Infrastructure need to be ensured by make the damage to the Telecom infrastructure by the miscreants a cognizable offence.

8. Apart from the above issues that need to be considered while framing the new legal framework, we are also laying down certain concerns of criminality for outdated laws under the ITA of 1885. Certain sections of the Indian Telegraph Act, 1885 have become archaic, outdated and no longer relevant in as much as the transmission of messages over a telecommunication network and the associated charging processes are system driven involving no human intervention. Hence such sections should be repealed:

a. Section 27 which imposes punishment with an imprisonment term with fine or both, if a telegraph officer transmits by telegraph any message on which the charge prescribed by the Central government has not been paid. This has become obsolete in the present day due to technological advancements and no human intervention is required in transmission of message. Hence, such sections should be repealed.

b. Section 28, which states that any telegraph officer or any other person not being a telegraph officer but having official duties connected with any office which is being used as a telegraph office is guilty of any act of misconduct as defined under the Act which leads to delay or disruption in correct transmission of any message, etc. such a person may be punished with an imprisonment for a term which may extend to three months or with fine up to INR100 or both. This has become obsolete in the present day and also such misconducts are dealt with by the licensees in accordance with the prevailing employment laws / policies, and hence the same should be repealed.

c. Section 30, which imposes punishment with an imprisonment term with fine or both, if a person fraudulently retains, or conceals, removes, holds without any reason any message which ought to have been delivered to some other person, or, being required by a telegraph officer to deliver up any such message, neglects or refuses to do so.

This has become obsolete in view of the technological advancement wherein no human intervention is required for transmission of message. Hence, such sections should be repealed.

d. Section 29A of the Indian Telegraph Act, 1885 should be repurposed to address the menace of widespread tower fraud by introducing criminal prosecution and punishment as a cognizable offence, which will strengthen the measures being taken by TSPs as well as DoT and send a strong message of deterrence to such perpetrators. It is proposed to introduce a minimum penalty of INR0.1 million and/ or imprisonment of six months in the case of the first offence and a penalty of INR0.5 million and/ or imprisonment up to two years in the case of each subsequent offence. The offence is recommended to be made cognizable and nonbailable.

e. The fine/ penalty imposed by Section 21 should be enhanced to up to INR10 million or proportionate to the revenue loss caused to the government or the licensees. Also, punishment of imprisonment of an adequate term should be introduced. The offence should be made cognizable and non-bailable. The act should also provide for power of appropriate authority to investigate and seize/ confiscate unauthorized telegraph equipment under the present Act.

f. Section 20 should be amended to make offenses relating to establishing, maintaining, or working unauthorised telegraph without proper license or authorization from the government, cognizable and non-bailable. The quantum of fine should be substantially enhanced in order to create deterrence and compensate the government for loss of revenue.

g. Section 23 should be amended to make offenses relating to intrusion into signal room, trespass in telegraph office or causing obstruction, non-bailable and cognizable. A penalty of up to INR10 million per instance of offence should be introduced as a deterrent measure, to be paid to the impacted TSP/ licensee as these entities incur a huge cost in acquiring license for setting up necessary infrastructure and operations.

h. Section 25A should be amended to cover all damages to all types of infrastructure such as OFC, BTS, Exchanges, etc. created by TSPs for delivery of their services to customers. We recommend enhancement of the penalty, proportionate with the loss/ damages caused to the TSP/ licensee by such illegal act, to be paid to the impacted TSP/ licensee. Further, such offenses should also be made cognizable and non-bailable.

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VNOAI

Our Ref: VNOAI/REG/ DOT/F-002-0109 Date:- 01.09.2022

To

Department of Telecommunication,
Sanchar Bhawan,
Ashoka Road,
New Delhi-110001.

Kind Attention:- Mr.Naveen Kumar

Sub: VNOAI- Comments on consultation paper on "Need for a New Legal frame work governing Telecommunication in India".

Sir,

VNOAI's Response to the consultation paper on "Need for a New Legal frame work governing Telecommunication in India".

Introduction and Background

VNOAI on behalf of all the member VNOs welcome the initiated taken by DoT for the issue of consultation paper on "Need for a New Legal frame work governing Telecommunication in India" in view of advancement of technologies in Telecommunications.

This is in reference to the consultation paras 3,4,5 and 6 where in DoT considering to have a modern and future-ready legal framework which addresses the realities of telecommunication in 21st century India. *'Azadi ka Amrit Mahotsav'* is an opportune time for reimagining India's telecommunication legal framework.India needs a new law which is clear, precise, and attuned to the realities of the sector for realizing the potential of telecommunication. Emergence of new technologies such as 5G, Internet of Things, etc. among others offer many opportunities to transform the lives of millions of Indians.

Due to emergence of new technologies there is convergence in Telecom and Broadcasting on account of digitalization and increasing use of IP technology. Due to digitization the Technological convergence is inevitable. In view of rapid march of technology innovations in Digital Communications and Internet of Things there is a need to adopt it otherwise there would be waste of resources of networks.If the old laws and ACTs which were prescribed for telegraphs in 19th Century and Govt is not able to do reforms for ease of doing business due to the current convergence of technologies both in Telecomm and Broadcasting .There is immediate need to review the current old laws as these were not designed to cater to the present converged technologies.

At the same time there is market related convergence also in Information, Communication and Entertainment markets. Thus operators in the field of pure information providers like newspapers or internet service providers are also getting into related fields of entertainment (through radio or television) and communication (through fixed FTTH or Mobile technologies on 4G,5G). Triple play is giving way to quad play as operators give fixed line internet services, data services, video services and fixed line telephones. All the services are riding on digital technologies on IP all services are a case of market convergence. As a result it is now possible for telecommunications networks to offer broadcasting (Video Services) on Mobile and Fixed Line last mile on OFC Cables direct to home. Similarly broadcasting networks can offer telecommunication and data services whereas Mobile networks can provide both telecommunication and broadcasting services and Video on demand services etc.

Growth of Convergence

The major technological changes that have facilitated the convergence processes are digitalization and computerization. Digitalization enables new possibilities for development and creation of services within and beyond the framework of traditional communication sectors. The developments in hardware and software have empowered digital signal processing to such an extent that with use of IP technology in information transmission, the networks and customer premises equipment have got empowered to introduce hitherto not known applications and services. Computerization has made available data processing capabilities, which can be applied for storage/ manipulation/ transmission and distribution of Television content/ Voice Communications (Phone calls). This is leading to death of distance and fundamental changes in the business plans of existing telecom and video services providers.

New Telecom Policy 1999 (NTP'99)

In NTP'99 recognized that convergence of both markets and technologies is a reality that is forcing realignment of the industry. At one level, telephone and broadcasting industries are entering each other's markets, while at another level, technology is blurring the difference between different conduit systems such as wireline and wireless. It also recognized that the old frame-work specified in NTP'94 was inadequate and/or no longer suited to the developments that had occurred since then. NTP, 1999 had also specified Cable Service providers as one of the categories of Access providers for telecom services.

National Telecom Policy – 2012 (NTP 2012)

National Telecom Policy – 2012 (NTP 2012) recognized that the evolution from analog to digital technology had facilitated the conversion of voice, data, and video to the digital form. Increasingly, these were being rendered through single networks bringing about a convergence in networks, services and also devices. Hence, it was imperative to move towards convergence among various services, networks, platforms, and technologies and overcome the then existing segregation of licensing, registration and regulatory mechanisms in these areas to enhance affordability, increase access, delivery of multiple services, and reduce cost. Further, it envisaged providing secure, reliable, and affordable and high- quality converged telecommunication services anytime, anywhere for an accelerated inclusive socio-economic development.

So that the emerging technology in future take care of interest of consumers, service providers and there is ease of doing business for all stake holders under the convergence act duly taken care.

National Telecom Policy – 2018 (NTP 2018)

The National Digital Communications Policy, 2018 The National Digital Communications Policy, 2018 seeks to unlock the transformative power of digital communications networks - to achieve the goal of digital empowerment and wellbeing of the people of India; and towards this end, attempts to outline a set of goals, initiatives, strategies and intended policy outcomes. The National Communications Policy aims to accomplish the following Strategic Objectives by 2022:

1. Provisioning of Broadband for All
2. Creating 4 Million additional jobs in the Digital Communications sector
3. Enhancing the contribution of the Digital Communications sector to 8% of India's GDP from ~ 6% in 2017
4. Propelling India to the Top 50 Nations in the ICT Development Index of ITU from 134 in 2017
5. Enhancing India's contribution to Global Value Chains
6. Ensuring Digital Sovereignty

VNOAI Recommendations:

1. In view of the recommendation in The National Digital Communications Policy, 2018 which seeks to unlock the transformative power of digital communications networks to achieve the goal of digital empowerment and wellbeing of the people of India; and towards this end, attempts to outline a set of goals, initiatives, strategies and intended policy outcomes. The Targets set in the policy can be achieved by doing the Legal reforms.
2. All the previous Legal Acts and frame work needs to be reviewed in the context of the current technologies developments and innovations happening in the Digital Communications and the convergence of all the technologies riding on IP-Networks.
3. Therefore it is suggested that the previously proposed Convergence Bill-2001 required to be reviewed in Toto and wide consultations be held with all the stake holders by TRAI and the futuristic Legal Frame work be evolved.
4. Regarding all the Licensing frame works required to be aligned with the new legal frame work and provide certainty and continuity of businesses accordingly.

5. The first move to harness the benefits of he converged technologies to meet the growing social and commercial needs in India was made when the Communication Convergence Bill, 2001 was introduced in Lok Sabha on 31st August 2001. The basic objective of the Bill was to provide a comprehensive framework for regulation of all telecommunication and broadcasting services. The idea was to have one regulatory body that would cover all aspects of telecommunication and broadcasting, including Spectrum management and Licensing – functions that hitherto were being done by the Government. The Bill also proposed to combine and bring under the purview of the proposed Communications Commission of India the regulation of content which was (and continues) to be done directly by government without any explicit regulatory and legislative framework.

During the last 22 years after the government conceived communication convergence bill 2001 which could not be passed in Lok Sabha due to certain objections from the stake holders. However during last 21 years TRAI,TDSAT,DOT,MIB, MIETY have taken certain measures and issued various legislations regulations and recommendations for governing the convergence of technologies for various services.

Therefore, it is imperative the practical convergence taken place for all telecommunication, broadcasting, Value Added Services, IOT and M2M services. There is a need for a new convergences Law/Act to be brought in line with requirements of new technology developments both in Communications and Broadcasting networks in order take care of all futuristic technologies riding on IP on 4G,5G or 6G etc. There is a need for a suitable legal frame work to be established for meeting the requirement of the consumers in the current converged technological era. The new Laws and legal frame work need to enable India to leapfrog to 21st Century in seamless manner.

The old open ended prescribed legal frame work needs to be reviewed and new Legal Frame Work required to be formulated after wider consultation with all industry and consumer stakeholders. Previously **TRAI did consultation on "Convergence and competition in Broadcasting and Telecommunications dated 02.01.2006 and recommendations dated 20.03.2006.**

6. VNOAI suggests to set up an expert group which required to be constituted in order to recommend suitable changes in the Convergence Bill-2001 in the context of present dynamics in the communication and broadcasting sector be thought of after Open consultations done by TRAI.

Submitted for your kind consideration and favorable action in the interest of Indian consumers.

Warm Regards,

For Virtual Network Operators Association of India

(Rakesh Kumar Mehta)
Secretary General
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GSMA's comments on Consultation Paper released by DoT regarding 'Need for a new legal framework governing Telecommunication in India'

At the outset, the GSMA thanks the DoT for the Consultation paper on "Need for a new legal framework governing Telecommunication in India" and providing an opportunity to submit our comments. DoT has been making constant endeavours for growth of telecommunication sector in India which is the bedrock for achieving the Digital India ambitions of the Government.

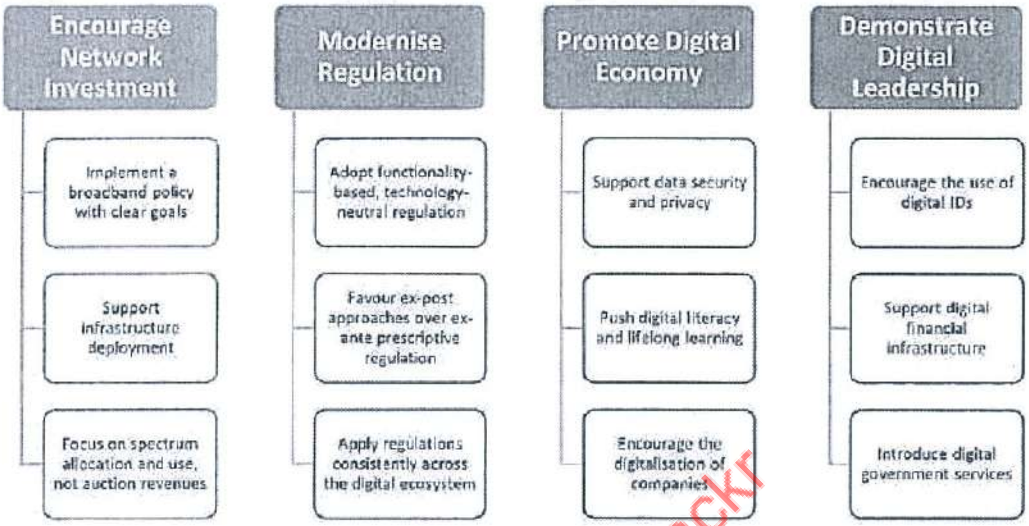
The Telecom sector in India is mainly governed by laws which have not kept up with the rapid pace of telecom evolution and development. In addition, the telecom industry has made substantial investments in spectrum and network infrastructure and further investment will be required for future generations of technology. Therefore, there is a need for a forward looking, comprehensive legal and regulatory framework that is defined in a single law that reflects the changing digital landscape while reducing costs and barriers to network creation, deployment and expansion to deliver the best outcome for both the economy and society at large.

There are challenges for Governments and Regulators at the forefront of technology, including socio economic equity, level playing field, compliance and quality of service. With growing convergence of digital technology and services, these challenges have become even more complex. On one hand, regulations have to ensure there is no hindrance in unleashing the power and value of technology but on the other hand, the benefits from technology innovation must be equitable and sustainable. Hence, the future of regulation of digital transformation and integration of various technologies, networks, applications and services, is a crucial policy perspective in today's world. Decisions made today are likely to have an impact of the future development of ICT services for consumers, businesses, governments and for society in general.

The recent set of telecom reforms have had a positive impact for the sustainability of the sector in terms of promoting healthy competition, attracting foreign direct investment. However, further reforms are required to support the development of advanced telecom infrastructure is a fundamental driver for a digital society.

A forward looking, holistic and flexible policy framework will deliver the best social and economic outcomes for India.

The GSMA identifies four areas of policy action to promote an inclusive digital economy[1].


Encourage Network Investment
Implement a broadband policy with clear goals
Support infrastructure deployment
Focus on spectrum allocation and use, not auction revenues
Modernise Regulation
Adopt functionality-based, technology-neutral regulation
Favour ex-post approaches over ex-ante prescriptive regulation
Apply regulations consistently across the digital ecosystem
Promote Digital Economy
Support data security and privacy
Push digital literacy and lifelong learning
Encourage the digitalisation of companies
Demonstrate Digital Leadership
Encourage the use of digital IDs
Support digital financial infrastructure
Introduce digital government services

Policymakers across the Globe recognise the need to modernise their policy framework, as can be seen in the European Union, where major reforms are underway to protect consumers and encourage competition without impeding social and economic progress.

A modern and future-looking framework will drive digital transformation for an inclusive Digital India. DoT Consultation rightly notes many leading Telecommunications markets like the UK, Australia and the US have all continuously evolved and reformed their Telecom Acts in last 2-3 decades.

In this regard, our proposal is that the new framework should focus on following key areas:

1. **Regulatory & Licensing**

   i. Any new licenses under the proposed new framework should be technology and service neutral to better facilitate both 5G operations and to continue strengthening 4G mobile broadband.

   ii. Enable network deployment by facilitating the deployment and sharing of active and passive infrastructure

   iii. Need to ensure level playing field among all technologies. Consistent application of rules across all players offering same/similar service such as digital platform players.

   iv. Mobile operators need the flexibility to differentiate between different types of traffic. Any regulation that limits their flexibility to manage quality of service from end to end and provide consumers with a satisfactory experience is inherently counterproductive.

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[1] https://www.gsma.com/publicpolicy/wp-content/uploads/2022/03/Mobile-Policy-Handbook-2022.pdf

v. Requirement of regulatory Impact assessment (RIA) should be incorporated as a best practice for introducing any new rules or regulation impacting telecom. Same approach has been adopted by various regulators including OFCOM in UK.

vi. Current MNOs have made considerable investments based on the current law and licensing framework. Any change to a new framework should have a transition phase to ensure MNOs or any other ecosystem player is not adversely impacted.

2. **Spectrum Management**

i. Spectrum Licensing – Licensed spectrum is critical to the future expansion of mobile services. Licensing frameworks:

- Ensure operators have access to sufficient spectrum
- Provide predictability to support the new network investment needed
- Avoid costly restrictions on the use of spectrum beyond those needed to manage interference

ii. Spectrum Roadmap - A transparent, long-term roadmap at least for 10 years that includes a strategy for making sufficient spectrum available to the mobile industry needs to be developed, with clearly defined terms and conditions

iii. Harmonisation - Spectrum harmonisation has the benefits of economies of scale which in turn, have made mobile services and handsets more affordable. Governments that align national spectrum use with internationally harmonised band plans will achieve the greatest benefits for consumers and avoid interference along their borders.

iv. Duration - A licence duration of at least 20 years will incentivise network investment. A 20-year or longer licence period offers the certainty mobile operators need to expand and upgrade networks. The use of indefinite licence terms can make operators even more willing to invest.

v. Pricing - Spectrum pricing has a significant impact on investment and the quality of mobile services. The cost of spectrum impacts the total cost of telecommunications services and the sustainability of the telecommunications industry. Governments that seek to maximise state revenues from spectrum pricing, for example, risk deterring investors from upgrading their networks.

vi. Renewals - The presumption of licence renewal and clear and timely renewal decisions are crucial to mobile network development, as they provide mobile operators the certainty they need to make large, long-term investments in their network and mobile services. A decision not to automatically renew a licence should only be made in circumstances where the benefits of reassigning spectrum would outweigh the costs.

vii. Spectrum Sharing, Leasing & Trading - Spectrum sharing reduces the spectrum shortages faced by some mobile operators while also ensuring valuable spectrum does not lie fallow. It enables more intensive spectrum use and higher volumes of services, improves service quality and lowers the costs of service provision. All this supports greater capacity and more affordable services.

- Voluntary sharing, trading and leasing of spectrum should be encouraged.
- Authorities should only be notified of the agreements. Notification enables authorities to assess whether a proposed trade would create any risks to competition
- Transparent and well-timed licence renewal processes, and information on spectrum availability, pricing and conditions, will facilitate sharing, leasing and trading

viii. Technology Neutrality - Technology neutrality encourages innovation and promotes competition. Operators should be allowed to deploy any mobile technology that can technically coexist within the international band plan.

ix. Spectrum for Industries – Reserving spectrum for industries in core mobile bands pose significant risks to wider mobile services, most notably insufficient spectrum for mobile services, higher prices, slower rollouts and reduced coverage. To meet their needs, the industries can access the spectrum using sharing & leasing with mobile operators. For any additional needs, verticals can also make use of already available Unlicensed spectrum.

x. Backhaul spectrum – Timely availability of new affordable backhaul bands are needed to support evolving network requirements and increasing traffic (E&V bands). Government needs to carefully consider the most effective backhaul licensing terms approaches, terms & conditions.

3. **Right-of-way**

i. Public authorities should provide licensed operators and passive infrastructure providers with access to public property and RoW on reasonable terms and conditions. RoW charges on cost recovery basis can be incorporated as a principle in the new law to ensure viability and affordability of telecom services.

ii. State Government and various central agencies/ departments should ensure swift approval for building communications infrastructure, and environmental restrictions should reflect globally accepted standards. The new Act should give legal backing across states to Telecom RoW approvals/permissions for installing telecom infrastructure.

iii. A Single unified online portal should be encouraged for RoW clearances at central and state government level.

iv. There should not be any artificial restriction on placement of telecom infrastructure such as near school, hospitals, heritage etc.

v. A strict penal action must be prescribed for any wilful damage to critical telecom infrastructure.

vi. An effective dispute resolution framework for RoW issues may also be provided for.

4. Regulatory Levies/ Fee/ Charges/ Sector-specific Taxation

i. Sector-specific levies and taxes applied on mobile consumers and operators which includes GST, excise duties on mobile handsets/devices, revenue-share (license fee including USOF levy) etc.

ii. These levies and taxes deter uptake of mobile services and can slow adoption of ICT. Lowering such levies and taxes benefits consumers and businesses and boosts socio-economic development.

iii. Many advanced regulatory regimes recover only the cost of administering a resource for example, OFCOM in UK (UK Telecom Act 2003), FCC in the USA, and Australia. India's new law should align to global best practices.

iv. Governments should reduce or remove mobile-specific levies and taxes because the social impact and the long-term positive impact on GDP (and hence tax revenues) will outweigh any short-term reduction in contributions to government budgets.

5. Scope of USOF

i. USOFs are typically funded by levies on telecommunications sector revenues and the funds are disbursed either through direct subsidies or competitive bidding.

ii. Despite these goals, USOFs often perform poorly, and countries with USOFs have typically not experienced stronger internet growth. Studies by the GSMA and the ITU show that disbursement rates remain very low across the world and that many funds have been unable to distribute any of the levies collected.

iii. Given the accumulated corpus in the USOF in India, the USO levy should be placed in abeyance till existing corpus is utilized. This will make more funds available to industry for rollout and deployment of 5G networks.

6. Quality of Service

i. The QoS experienced by mobile consumers is affected by many factors, some of which are beyond the control of operators, such as the type of device, application and propagation environment. Defining specific quality targets is neither proportionate nor practical.

ii. Competitive markets with minimal regulatory intervention are best able to deliver the quality of mobile service customers expect. Regulation that sets a minimum QoS is disproportionate and unnecessary.

7. Standards, Public Safety & National Security

i. Telecom Standards – The GSMA recommends prescription of international standards to allow operators to access the largest number of supply options and to gain more competition in procurement decisions

ii. Data Privacy - The necessary safeguards should derive from a combination of internationally agreed approaches, national legislation and industry action. Governments should ensure legislation is technology neutral and that its rules are applied consistently to all players in the internet ecosystem. While governments must ensure smart data privacy laws take account of citizens' privacy concerns, they must also recognise that these rules can have important consequences beyond the protection of privacy. As a result, when drafting these rules, governments must take into consideration how these laws sit within an economic and societal context. Any provision related to data protection should have flexibility for MNOs/ licensed operators to make use of data in a safe, secure manner, and should not be put at a disadvantage compared to any other similarly placed players.

iii. Illegal content - Mobile operators and ISPs, are not usually liable for illegal content on their networks and services, provided they are not aware of its presence and follow certain rules. As such, they should not be expected to monitor and judge third-party material, whether it is hosted on, or accessed through, their own network. The mobile industry is committed to working with law enforcement agencies and appropriate authorities and having robust processes in place that enable the swift removal or disabling of confirmed instances of illegal content hosted on their services.

iv. Mandated Government Access - The retention and disclosure of data and the interception of communications for law enforcement or security purposes should take place only under a clear legal framework and using the proper process and authorisation specified by that framework. There should be a legal process available to mobile operators to challenge requests which they believe to be outside the scope of the relevant laws. The costs of complying with all laws covering the interception of communications, retention and disclosure of data and other measures for national security should be borne by governments. Such costs and the basis for their calculation should be agreed in advance. It should also be considered that communications between users on an internet-based platform, known as an over-the-top (OTT) service, is generally beyond the reach of mobile operators.

v. Mandated service restriction orders (SROs) - From time to time, mobile operators receive orders from government authorities to restrict services on their networks. These SROs require operators to shut down or restrict access to their mobile network and services. Orders include blocking particular apps or content, restricting data bandwidth and degrading the quality of SMS or voice services. Governments should only resort to SROs in exceptional and pre-defined circumstances, and only if absolutely necessary and proportionate to achieve a specified and legitimate aim that is consistent with internationally recognised human rights and relevant laws. Telegraph being a Union subject, only the Central government should be the governing authority in this regard. Further, M2M communications should be outside the purview of such SROs.

vi. Strict action must be prescribed for illegal possession of repeaters, jammers.

8. **Electromagnetic fields and health**

    i. The WHO and ITU encourage governments to adopt the radio frequency electromagnetic field (RF-EMF) exposure limits developed by the International Commission on Non-Ionizing Radiation Protection (ICNIRP).

    ii. The international exposure guidelines are not technology-specific and apply to all mobile technologies, including 5G.

    iii. The strong consensus of expert groups and public health agencies, such as the WHO, is that no health risks have been established from exposure to the radio signals of mobile devices and mobile network antennas that comply with international safety recommendations.

    iv. National authorities should implement EMF-related policies based on established science, in line with international recommendations and technical standards. Significant differences between national limits and international guidelines can cause confusion and increase public anxiety. Therefore, India should align with global EMF norms and specifications.

9. **A comprehensive review of penalty provisions**

    i. The new law should enable penalty provisions that should commensurate with the violation and be proportionate. New provisions need to be devised in consultation with the industry.

MAIT

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Ref. No.MAIT/PY/2526 September 01, 2022

Shri Naveen Kumar
Director (Restg.)
Department of Telecommunications

Subject: Submission on the Consultation Paper on 'Need for a new legal framework governing Telecommunication in India'

Respected Sir,

Greetings from MAIT!

At the outset, MAIT sincerely thanks the Department of Telecommunications ("***DoT***") for the opportunity to comment on Consultation Paper on the '*Need for a new legal framework governing Telecommunications in India*'[1] ("***Consultation Paper***") issued on 23rd July 2022 for public consultation. The Consultation Paper proposes to establish an enabling future ready framework for the development of the telecommunication sector and deployment of new technologies in India.

We commend the DoT for taking the initiative to commence discussions on the planning and eventual defining of strategic goals, priorities and framework in the telecom sector that will enable the digital society of the future and ultimately benefit both Indian citizens and businesses.

MAIT had extension deliberations with its industry members and would like to bring forward the following comments and recommendations in relation to some of the subjects discussed in the Consultation Paper and the corresponding concerns that the industry is currently facing:

A. Definition of Telegraph

The Indian Telegraph Act 1885, currently defines 'Telegraph' as the following:

'["telegraph" means any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, visual or other electro-magnetic emissions, Radio waves or Hertzian waves, galvanic, electric or magnetic means.

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[1] Available at - https://dot.gov.in/sites/default/files/Consultation%20Paper%20and%20Notice.pdf?download=1

Explanation. "Radio waves" or "Hertzian waves" means electro-magnetic waves of frequencies lower than 3,000 giga-cycles per second propagated in space without artificial guide;]

With the advent of technology, there is a substantial increase in smart connected products – from customer premise equipment to consumer electronics to automobiles. Given the IoT products' capabilities to transmit and receive data in any form, there is an increasing need to define the scope of telecom products. This is critical from the perspective of multiple telecom regulations that hardware companies are required to undertake, product testing.

Recommendation #1: The Government may consider introducing definitions such as for "electronic communications network", "electronic communications service", "internet access service" and "associated facility" – such as in Section 32 of the UK Communications Act, 2003[2]. These terms take into account the multifarious means of connectivity at present, and their broad language would also allow for encompassing the future means of communication as they evolve. Furthermore, this would also address the need for distinguishing between internet service providers (such as telecom companies), and technology facilitators (such as Cisco).

B. Simplification of the licensing regime:

As part of the Indian Telegraph Act, 1885, the Government of India has **exclusive powers to grant licenses for working telegraphs.** Further to this, the National Telecom Policy, was revised by the Indian Government in June 2012[3]. One of the objectives of the NTP, 2012, was **simplification of the licensing framework** to further extend high quality services across the nation, including remote areas. Most importantly, the NTP 2012 also highlighted the need to 'strive to create **One Nation – One License** across services and service areas.

As highlighted in the TRAI's consultation on '*Enabling Unbundling of Different Layers Through Differential Licensing*', it was stated that the Government decided to implement this regime in two phases, in the first phase, UL regime was introduced in 2013, and in the second phase, towards the delinking of licensing for networks from the delivery of services, a new category of Unified License (Virtual Network Operator) was introduced in 2016[4].

The original intent of the delinking of the licensing of Networks from the delivery of services to the end users could have been optimal and efficient use of network infrastructure and spectrum. However, the advent of the UL(VNO) License regime has not brought about significant transformation in the area of network related services.

One of the biggest impediments to this unified licensing approach has been the challenge pertaining to interconnection of IP and PSTN. According to the Section 2 Scope of Service of the UL (VNO) License Agreement[5]:

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[2] https://www.legislation.gov.uk/ukpga/2003/21/contents

[3] https://dot.gov.in/sites/default/files/NTP-06.06.2012-final_0.pdf

[4] https://www.trai.gov.in/sites/default/files/CP_09122019.pdf

[5] https://dot.gov.in/sites/default/files/2018_08_31%20UL%20VNO%20A.pdf

(ii) The Internet Telephony, only as described in condition (ii) above, can be provided by the Licensee. Voice communication to and from a telephone connected to PSTN/PLMN/GMPCS and use of E 164 numbering is prohibited

Potential VNO Operators are mandated to expand their licensing requirements with an additional license – the Unified License – to enable services in India, primarily because of this concern. This has inhibited the wide adoption of the licensing regime and promulgation of pivotal services in India.

It is important to note that Cloud based conferencing services help large and small organizations to collaborate with internal employees or with any external participant using internet, Closed User Group (CUG) or Public Switched Telephone Network (PSTN). According to 6Wresearch, India unified communications (which primarily include voice, video and messaging based communications) and collaboration market is anticipated to record CAGR of 12% during 2017-23[6].

India's current IP-PSTN barrier poses a significant challenge to the innovators developing these services and to the consumers and enterprises that use them. This impacts Indian consumers and enterprises directly, as they are often forced to use significantly pared back versions of the services. It also impacts India more broadly as service providers and innovators will increasingly consider developing and testing new advanced services in other countries.

Today, Indian customers are serviced with International Bridges (mostly Singapore/US), by carrying all IP traffic and PSTN traffic (international long distance) to international location. This is because Indian regulations do not permit to mix VoIP and PSTN call, i.e. one cannot make a phone call from internet to a PSTN/mobile number or vice versa. The initiation and the termination of the call needs to be on the same side, either on PSTN/mobile or on the internet.

Further, despite over six year of implementation, the processes are yet to be streamlined, impact the ease of doing business.

The current timeline provided granting a UL/UL(VNO) license is upto 120 days. We request the following:

1. The DOT has a dedicated portal for submitting applications. Currently, there are only three stages that are visible for an applicant
    a. Submitted
    b. Under Process
    c. Completed
2. It is recommended that the stagewise approvals/comments are recorded on the site it will be more transparent and easier to monitor by the applicant
3. It would also be beneficial if the inter-departmental movement of the request can be traced through the portal
4. The entire process should have a guaranteed turnaround time (TAT), including stagewise TAT and overall TAT from application to grant of license

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[6] https://www.electronicspecifier.com/products/communications/unified-communications-and-collaboration-market-to-grow-at-12

In addition to the above, there is lack of clarity on adoption of UL license of a Virtual Network Operator (VNO) license. The National Digital Communications Policy 2018 under the National Broadband mission has listed convergence in areas such as IP-PSTN switching as one of the strategies. The convergence is much needed to realize the full potential of the VNO license.

Recommendation 2(a): Expand the scope of UL (VNO) License to include interconnection between IP and PSTN requirements by the VNO licensee.

Digital services

India has made remarkable progress in mobile services in the last two decades starting 1996 to 2022. The telecom service providers have made large investments in networks and bridging of digital divide is visible.

However, with the advent of technology new and innovative services have evolved, these new services are leading to increase in workforce productivity through collaboration and information exchange. The usage of traditional telephone connection has moved beyond the basic *'need to talk'*. The concept of integrated communications platform is fast emerging where data, voice, instant messaging, documents and screen can be shared seamlessly across devices and platforms.

This integrated communication is provided in the 'services layer' with the underlying 'network layer' sourced from telecom service providers. The new legal framework should facilitate the advent of this new technology through *a light touch licensing regime*.

There are various service area wise compliance requirements under the current license regime, these add to the burden of compliance for a 'service licensee'. Hence there is a need for Virtual network license with National jurisdiction for Digital Services, this is similar to the M2M Category A service authorisation.

Recommendation 2(b): Expand the coverage of UL (VNO) License to National Service Area for Digital services in the true spirit of 'One Nation One License' policy.

Lawful intercept

The concept of communication in the age of 'telegraph' was point to point communication, later it graduated to bridging, wherein more than one person could participate in the conversation.

With the advent of IP technology, many more forms of communication have emerged viz. contact centre, meetings, conference, screen sharing, integration with other desktop software, whiteboard etc.

Hence, there is a need to distinguish between public telecommunication network and other communication network (or business communication network)

- **Public telecommunication network** – where a user identifiable number is allotted to the end user with an ability to make a call and call back in real time. This is subject to lawful intercept under proper authorisation.

- **Other communication network** - where more than one persons communicate, but there is no ability to make a point to point call / call back in real time, as there are no user identifiable number. This should be exempt from lawful intercept.

Recommendation 2(c): The distinction in law should be made for Public telecom network and other communication network. There are many conditions in Part-1 of the Unified License / UL(VNO) that are not squarely applicable to Digital Services.

C. Spectrum Management

1. A world-class digital infrastructure will require that the radio spectrum is managed in an efficient and effective way. An essential element of the future gigabit network that needs particular consideration is the final link that connects the user to the access network. It is imperative that this final link is strong so that the network is also strong.

2. Telecommunications, and spectrum in particular, has been recognized as an important tool for socio-economic development of a nation. It is one of the prime support services needed for rapid growth and modernization of various sectors of the economy. Spectrum is one of the most important and crucial ingredients for wireless communication services. Accordingly, instead of auctioning spectrum in an oligopolistic market, the DoT should consider increasing 'access' for the benefit of the public, instead of concentrating power in a few hands.

3. We recommend that when defining its mobile strategy, DoT could perhaps take into account the important role of licence-exempt technologies, specifically technologies like Wi-Fi which is playing a key role in providing connectivity for mobile devices. When assessing the future demand for mobile spectrum the needs of consumers and businesses for local connectivity must be carefully considered. While making a sufficient amount of spectrum available for mobile use (5G/6G) is important, the characteristics and requirements of local connectivity and other emerging use cases need to be considered as well.

4. As far as providing access to spectrum is concerned, we note that the DoT proceeds with auctions (4G, 5G) and administrative allocations (E-band). However, this approach tends to leave out the spectrum requirements for other players in the industry since the needs of telecom licensees/telecom service providers is given precedence over and above the needs of other relevant stakeholders in the industry. New technological developments and global trends in IoT, Short Range Devices, Wi-Fi, etc. also need to be taken into consideration for the advancement of the industry and to ultimately bring technological benefits to its citizens.

5. For proper inclusion of all players, and optimum utilization of this scarce resource, *i.e.* radio frequency spectrum, DoT may consider introducing a formalised and institutionalised process to look at and analyse requirements for all kinds of the spectrum (besides the licensed spectrum viz. 5G, etc.) while taking into consideration technological advances, global trends and harmonisation. Delay in allocating spectrum for non-carrier related spectrum needs tends to hamper the progress of the Indian electronic industry in terms of testing, bringing new products and meeting the market needs both domestic and exports as well as depriving Indian consumers of the best wireless technology innovations.

6. The relevant authorities may consider making arrangements for reallocating and repurposing some spectrum bands to create spectrum sharing opportunities which would

eventually enable stakeholders as well as policy makers to understand spectrum efficiency and would make spectrum allocation effective. A provision may be made for other non-telecom players, such as the OEMs that enables OEMs to offer wireless features to the users of its products and devices.

7. Given that a lot of coordination between TRAI and DoT is required to undertake consultations, empowering TRAI to *suo moto* take spectrum consultations for areas that lie beyond spectrum needed by Service Providers may also be considered.

8. Further, the DoT may expeditiously look into/evaluate de-licensed spectrum requirements with a strong legal footing and send references on de-licensed spectrum to TRAI based on its own assessment and/or requests from the industry.

D. Penalty

1. The existing Acts/Rules/regulations governing the telecommunication space in the country prescribe penal sanctions in cases of non-compliance. In the interest of clarity, incentivisation of regulatory compliances and ease of doing business, it is recommended that the DoT undertake a whole-of-government exercise to identify all laws and policies/guidelines/instructions applicable to the telecommunication sector to introduce proportionality-based penalty schemes involving fines and liquidated damages. This penalty system would be based on differential fine based on the gravity of the violation. Penalties should be reduced and may not be applied during certain stages such as the testing phase, software upgrades, database clean up, etc. Similar categories of errors, such as malfunction of software application and database structure/corruption, may be clubbed and viewed as one instance as opposed to multiple minor violations. Harsh penalties, such as cancellation of licenses/registrations, may be exercised as a last-resort for instances of non-compliance.

2. The cost of regulatory compliance may tend to overburden organizations to the extent that fear of making mistakes hamper genuine business growth and investments. This is especially true in the present global climate where multi-national organizations are looking for diversifying their supply chain and with the right investment climate. Industries with heavy capital requirements tend to veer towards countries where there are simplified, minimal and streamlined compliance regimes. Accordingly, the DoT may consider using positive re-enforcement as a regulatory strategy by adopting the 'Stick and Carrot' approach. Not only should it consider rewarding OEMs and other stakeholders for adhering to the guidelines but also improve the overall compliance environment in the industry by encouraging non-compliant organizations to move to the compliance regime voluntarily and lead to a trust based relationship between the enforcer and complaint organisations.

3. Integration of precise timelines on portals and compliance checklists can assist relevant authorities in assessing the extent of compliance by applicants and allow for faster approvals for entities that are compliant with the respective requirements as demarcated. Other benefits, such as charging a lower rate of physical inspections of the imported/exported goods, faster release of shipments, and deferred payment of duties, may be considered to encourage applicants to meet the compliance criteria and demonstrate the security of the supply chain.

4. Duplication of compliances and overlap of products under various departments.

E. Standards, Public Safety and National Security

1. Global Standards

(i) India should continue to adopt global standards for upcoming technologies for the benefit of its citizens.

(ii) Adopting global standards will help Indian manufacturers to bring Indian products and solutions to the global market and export the products and solutions around the world. This will also help fragmentation in catering to one standard for the Indian market and the other to export products to other countries. DoT is recommended to encourage Indian R&D institutes, universities and start-ups activity participate in global platforms such as 3GPP and oneM2M and contribute Indian requirements to international standards *viz* 3GPP, oneM2M, IEEE, etc. and not develop a new standard in silos that would have limited acceptability in the Indian and global space.

(iii) When adopting global standards, there should not be tweaking or modification of the global standards. Rather unique Indian requirements and solutions shall be explored for their proper inclusion within the framework of the global standards and achieve economies of scales.

(iv) It is important that the competence and impartiality of conformity assessment bodies are independently evaluated and verified against recognised international standards by accreditation bodies. Such conformity assessment bodies can be in a country with whom the Government of India can enter into an agreement for reciprocal acceptance of reports by Indian conformity assessment bodies (MRA-ILAC). A standard procedure for accepting reports prepared by such assessment bodies may be devised in order to ease the process and provide a single uniform standard for assessment. Self-declaration with strong Market Surveillance shall be explored on a long-term "Ease of doing business" prospective

2. Treatment of Consumer electronic products

(i) Consumer electronic products are different from Core telecom products and solutions like Packet Core, Radio Base Stations, Microwave, Internet Gateways, Routers, Switches, etc. Consumer products have

- Unique requirements
- Shelf life
- Supply chain logistics
- Clientele and End users
- Marketing and Sales channels
- Procurement and Purchase channels
- Product lifecycle (Both Hardware and Software)
- Fast faced innovations

and need special treatment whenever telecom Acts and rules are framed and updated. Many end-consumer products and solutions are getting integrated with the internet like, Autonomous and Self-driven Cars, Smart ACs, Smart Appliances such as Fridges. These products along with Smart Phones etc. cannot be expected to be subject to the same telecom rules and testing as the Core telecom equipment which forms an integral part of a telecom/mobile network. The new Telecom framework needs to consider this important class of end-user products.

Currently, the wide definition of 'telegraph' under the Indian Telegraph Act, 1885 brings ICT equipment and various consumer electronic products within the ambit of telecom and telecom equipment related regulations. Hence, in order to restrict the scope of telecom regulations vis-à-vis consumer electronic products it is recommended that the DoT in consultation with relevant stakeholders narrow down the scope and application of the relevant telecom equipment related regulations in a way that is specifically tailored towards regulating only core telecom products

3. Bolstering industry consultation prior to policy implementations

(i) The regulatory dispensation in testing and certification undertaken by TEC under its MTCTE certification has been subject to frequent changes which have been undertaken without adequate industry consultation. Such frequent changes have a detrimental impact on the business climate and project India in an unfavourable light as far as global trade and the international business community is concerned.

(ii) As seen from the MTCTE example, consultations have usually taken place with the industry post announcements and notification of the phases of MTCTE and proper consultation was not undertaken during the formulation of the MTCTE. Measures undertaken by TEC need to be in sync with the government's overall thrust on Ease of Doing Business in the country for TEC to act as an enabler for telecom standards and technologies as it has always been doing and not take measures that can be an impediment to business continuity and the economy. The recent DoT notification[7] (*S.O. 2372(E) issued on 24th May 2022)* on removing several consumer products from the scope of MTCTE is a step in the right direction that greatly improves the business environment. DoT should ensure that all organisations under its ambit, like the TEC, undertake mandatory public consultation with the relevant stakeholders before issuing any regulations and sufficient time of 1-2 years shall be extended for Industry readiness and testing infrastructure build out in the country with Self-declaration having strong Market Surveillance as a long-term solution.

(iii) As technologies evolve, so do new forms of threats to the security of the nation and its people. Cyber-hacking and cyber-warfare are threats which are undeniable and inevitable. These can involve attacks on the privacy of individuals as well as on the telecom infrastructure itself. There is an urgent need for the law to account for these emerging threats and to put in place a framework which provides clarity on the duties of all stakeholders, and also the mechanism for redressal. This framework would allow companies to prioritise security within their business operations in the short-term as well as guide their long-term investment plans.

It is on these lines that the UK government has introduced the Telecommunications (Security) Act, 2021[8], which amended the Communications Act, 2003 to introduce provisions on security measures to be implemented by network and service providers to identify and reduce the risk of security compromises. There are also provisions on notification of breaches by the internet service providers, which is a significant lacuna in Indian law as it stands.

One of the most important cyber-security measures which could be adopted in India pertains to the secure design and construction of network architecture, and the subsequent development and maintenance thereof. This would serve to protect public telecom networks against security compromises.

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[7] Available at: https://www.tec.gov.in/pdf/MTCTE/Exemption%20of%20five%20items.pdf

[8] https://www.legislation.gov.uk/ukpga/2021/31/enacted

It is also noteworthy that the UK government is seeking to introduce another separate legislation – the Product Security and Telecommunications Infrastructure Bill[9] – pertaining specifically to the security of consumer connectable products, falling under the broad umbrella of the Internet of Things ("IoT"). Given that the IoT devices such as smart TVs, smartwatches, etc. are so pervasive in homes across the country, it is imperative to secure the digital privacy of individuals and families from a telecommunications perspective, just as the Government is also seeking to ensure from the data storage perspective.

Recommendation #3: Introduce legislations specifically setting out the framework for the security of telecommunications at the network and product level, such as the Telecommunications (Security) Act, 2021 and the Product Security and Telecommunications Infrastructure Bill introduced by the UK government.

F. Other Measures to foster Ease of Doing Business (EoDB)

1. The upcoming legal framework should have enough measures to ensure flexibility to learn and implement from the good practices from other regulatory regimes as well as business friendly measures initiated and implemented by other government ministries/agencies.
2. To cite an example, the Customs department has the Authorised Economic Operator (AEO) program. This program enables the Customs department to identify the safe and compliant business entity in order to provide them a higher degree of assured facilitation. This segmentation approach enables the Custom department's resources to focus on less or non-compliant or risky businesses for control. This approach and/or similar approach can be explored for issuing WPC ETA certifications for de-licensed wireless products on self-certification basis.
3. The proposed framework also needs to ensure prevention of sensitive business information that is shared with the regulator for certification purposes before the official launch of the products in the market. In an era of hyper competitiveness, OEMs would desire that such information is not available to the competition before they bring such products/solutions to the market.
4. A "Deemed Approval" system may also be considered by the DoT which provides the relevant authority a specified period of time to scrutinise and clear the application of the applicant, and beyond this period, unless the regulatory authority objects, the application shall be deemed approved.
5. At present, products manufactured by OEMs are subject to rules and regulations issued by various departments and ministries including safety standard certifications, telecom equipment certifications, radio frequency related approvals, etc. This increases compliance burden on OEMs as they are required to follow varying procedures and timelines prescribed under various regulations simultaneously. There is a need to ensure convergence for testing and certification of devices. This can be

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[9] https://www.gov.uk/government/collections/the-product-security-and-telecommunications-infrastructure-psti-bill-factsheets

achieved through close coordination amongst the relevant authorities (such as BIS, TEC, WPC, TEC and MeitY etc.).

6. Additionally, there should be consideration for allowing international lab reports to be submitted under the "converged process", given that device security and customer privacy concerns would be a relevant factor in fully opening hardware and OS/software to labs in India.

7. Another recommendation for streamlining the process would be through single agency/window testing and certifications to obviate the possibility of duplicity of testing and certification requirements. The process for seeking approvals should be streamlined in such a manner that all the applications and approvals reach the respective department/ministry for which they are meant. A single platform for completing all formalities will reduce timelines thereby making the administrative process efficient.

8. There should be a single defined mechanism/ standard to establish trust in a product and supply chain irrespective of the sectors the product is deployed in. This will also help in addressing the potential issue of different critical infra sectors coming up with separate trust certifications and mechanisms e.g.: telecom and power.

9. Further, in the interest of regulatory ease, it would be beneficial for those involved in the application/approval process, if reasonable timelines are set to eliminate potential overlap between the application processing requirements established by respective authorities. Any update in the process for seeking approvals should be informed to the stakeholders well in advance.

10. To undertake the task of simplification of the application/approval process and establishing an efficient decision-making process as mentioned above, a "Regulations Review Authority" may be set up after every 5 years to review and streamline various regulatory and compliance procedures. Also before any mandatory testing and certification is put in place, Impact assessment shall become an integral part of it. This authority shall focus on streamlining regulatory instructions, carrying our impact assessment exercise of the legislation, reducing compliance burden of the regulated entities by simplifying procedures and reducing reporting requirements, wherever possible. Such an authority will also have the responsibility to ensure that regulatory stability and transparency is maintained because this would have a direct bearing on the stakeholders' planning and investment choices.

We are hopeful that the comments that we have provided on the Consultation Paper are carefully considered and taken on board by the Hon'ble DoT. We remain available for any further discussion / information at DoT's request.

With regards,

Col. AA Jafri, Retd.
Dy. COO
(Acting Director General – MAIT)

CC: Shri Anand Singh, Jt. Secretary (Telecom), Department of Telecommunications

ACTO
Collaborating for Competitiveness

ASSOCIATION OF COMPETITIVE TELECOM OPERATORS
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Regd. No. S/61593/2008

No.: 397/DoT/2022-23/ACTO
Dated: 01st September, 2022

Shri Naveen Kumar
Director (Restg)
Department of Telecommunications
Ministry of Communications
Sanchar Bhawan, 20 Ashoka Road,
New Delhi – 110 001

Ref: **ACTO's Response to DoT's Consultation Paper on Need for a new legal framework governing Telecommunication in India**

Dear Sir,

With reference to the *Consultation Paper on Need for a new legal framework governing Telecommunication in India* issued by Department of Telecommunication, Association of Competitive Telecom Operators (ACTO), is pleased to provide our comments.

We hope that our comments (enclosed as Annexure - I) will merit consideration of the DoT.

Thanking you,
Respectfully submitted

Yours sincerely,
for **Association of Competitive Telecom Operators**
Tapan

Tapan K. Patra
Director

Encl: As above

Annexure-I

ACTO's response to DoT's Consultation Paper on Need for a new legal framework governing Telecommunication in India

Introduction:

At the outset, we would like to thank the Department of Telecommunications (DoT) for coming up with this pertinent consultation paper on the need for a *'New Legal Framework for Governing Telecommunication in India' ("Consultation Paper")*.

Telecom is one of the most important pillars required for the development of all sectors of economy and its' role cannot be overlooked. COVID-19 has demonstrated the significant role that telecom plays in connecting the masses and keeping the economy up and running.

There is a need to overhaul the legal and regulatory framework that governs telecom in India. There has been a sea change in technology and business requirements since the time the Indian laws were enacted. The Indian Telegraph Act 1885 is over a century old. The Indian Wireless Telegraphy Act 1933 ('Act') and Telegraph Wires Unlawful Possession Act are required to be updated to adapt to 21st century technology. We are truly appreciative of the efforts of Government of India / DOT and the TRAI over time to align various requirements to the changing needs of the telecom sector in the Country. DOT has time and again amended the license terms to meet the changing requirement, but those changes largely pertain to the license terms. Many complexities that have arisen because of the modalities laid down under the Licenses granted by DoT. What is required is a more simplified regulatory framework wherein the regulations are kept to a minimum, are not overly prescriptive, provide a level playing field for all telecom service providers ("TSPs"), and are welcoming to entrants with new technologies. The licenses granted by DoT should not overly burden the TSPs, with onerous requirements, for both the existing as well as the new players who are yet to establish operations. The laws or the Licenses granted thereunder need to be suitably modified so that the regulatory burdens on TSPs and other stakeholders are eased out. With the above objective in mind, following is the response from ACTO to the DoT's Consultation Paper.

ACTO Recommendations Overview:

A. **Simplification of legal framework / different statutes.**

B. **Need for the simplification of the overall regulatory framework.**

C. **Licensing terms and conditions to be appropriately modified to align with the technology trends.**

A. Simplification of legal framework / applicable statutes:

ACTO members welcome and appreciate DOT move to have a new legal framework for the telecom sector. There is a need to simplify, align and update various statutes or legal requirements in view of the technological advancement in the industry. An overhauling can be accomplished through a consultative and collaborative approach between Government, Regulator and industry.

Currently, there are different legislations, acts, statutes, rules, and regulations that apply to a TSP, who is issued license under the current Indian Telegraph Act 1885, Indian Wireless Telegraphy Act 1933 etc. Besides these, there other legislations that have been promulgated by the legislators in India, including among others, the Telecom Regulatory Authority of India Act 1997, and the Information Technology Act 2000. We have also witnessed that over a period of time, different rules, regulations, and notifications have been issued that have directly or indirectly created uncertainties in applying different compliance obligations from a TSP. There are also requirements that are no longer applicable to the licensed TSPs, but the corresponding terms and conditions have not been modified. A case in point is the requirement for a TSP to set up LIM monitoring rooms, which has become obsolete pursuant to the implementation of the central monitoring system (CMS) by the DOT.

Recommendation:

Therefore, there is a need to simplify, streamline, and collate various legal requirements in such a manner that *inter alia*

(i) Provides more clarity on various applicable legal requirements for e.g., clarity on applicability of different provisions of Information Technology Act to licensed carriers, or encryption / bulk encryption requirements for licensed carrier under the license agreement vis-à-vis the Information Technology Act;

(ii) Enables ease of doing business and creates an environment that support the entire ecosystem;

(iii) Align or collate, where applicable, different rules, regulations, notifications issued under different legislations so that it is easier to track different compliance requirement, which at present is widespread;

(iv) Remove, discard, and delete the non-applicable or redundant provisions or compliance requirements that exist as a legacy requirement and which are no more applicable now given the technological advancements in the industry;

(v) Cybersecurity and privacy guidelines and regulations aligned to international best practices, while keeping in view India specific security and privacy requirements, clearly articulating applicability for different sectors. There should not be any artificial barriers to the cross-border data flows and no mandates for data localization;

(vi) The legal framework pertaining to penalties should be suitably modified to ensure it is proportionate to the nature and extent of the violation or non-compliance, if any, under the license; and

(vii) The exit procedure or surrender of license should be further simplified and rationalized.

(viii) Bank Guarantee rationalisation by CCAs still needs further simplifications.

(ix) Need for the single window at DOT for submission of queries by TSP or customers and timely response by the respective Dept. for clarity on various interpretation gaps on licensing terms.

B. Simplification of the regulatory framework:

Policy makers and regulators around the world are wrestling with questions about regulatory frameworks that produce the best outcomes. Excessive regulation poses a barrier to the growth of new and innovative services. The degree of regulation, including reporting requirements, applied to services, such as enterprise communication services, machine-to-machine (M2M) communications and the Internet of Things (IoT), and industrial 5G can be an important determinant of current and future economic growth. Regulatory simplification promotes a pro-investment and innovation climate and seeks, wherever possible, to rely on existing horizontal competition and consumer protection rules, and deregulate where appropriate, rather than incrementally building on historic and often outdated sector specific laws and regulations.

As the global Internet connects businesses around the world, traditional regulatory frameworks for telecommunications that may have previously made sense, as applied to mass-market retail services, can now hinder growth and opportunity, particularly as new technologies such as 5G come to market that do not fit neatly into outdated regulatory categories. Private 5G solutions, which are offered to enterprise customers, can challenge traditional frameworks. Opaque and complex regulations fail to consider the compliance challenges faced by service providers of new and innovative communication services that seek to offer service in numerous jurisdictions. Unnecessary regulation limits competition, thereby reducing choice and resulting in unnecessarily higher prices.

Regulatory simplification can lead to a number of benefits to both regulators and domestic and international players, including greater regulatory certainty and predictability; regulatory outcomes that minimize compliance costs and inefficiencies; a more prosperous environment in which innovation thrives; and a boost to economic competitiveness, which will be critical for economies to promptly recover from Covid recessions.

Some of the key areas suggested for reforms are as below:

(i) **Enterprise Services and the Importance of a "Fit for Purpose" Regulatory Environment:**

A key area for reform, and one that is relatively simple to adopt with little impact on consumers, relates to the simplification of regulatory obligations imposed on service providers that support enterprise customers.

Enterprise communications services are critical to the functioning of the modern, globally interconnected economy. Not just voice communications, enterprise services enable business enterprises to harness the power of high-speed and reliable data connections, hosting and storage tailored to their specific needs. These communications services are often combined with security, managed IT, and other services essential to modern business. They ensure that multinational companies whose operations span the globe can stay connected 24 hours a day, enabling continuous and uninterrupted global operations that contribute to competitiveness and innovation.

However, the growth of these technologies and other enterprise services are impeded by outdated regulations and obligations that lag behind these new market dynamics. In recognition that markets and innovation often outpace regulation, many countries build regular review periods into their frameworks to assessed every two to five years, that the regulations are in line with market realities, including protecting consumers and promoting competition. These reviews typically take place at the level of the regulator but may sometimes involve legislative overhauls.

Advances in the digital economy create opportunities for policymakers to evaluate the existing regulatory framework for communications services. Even where not mandated by law, regulators can take it upon themselves to evaluate the effectiveness and necessity of regulations.

Within these evaluations, regulators should consider the unique characteristics of enterprise services and the benefits of eliminating outdated regulations or taking a light-touch approach when updating applicable rules. For example, publication of tariffs, terms and conditions, consumer codes of practice or service charters, availability of consumer complaint-handling procedures, alternative dispute resolution schemes, compensation arrangements and termination of service regulations are generally designed to protect the rights of mass market consumers, as this is typically the most vulnerable group vis-à-vis service providers. Therefore, these types of regulations are not needed for enterprise-only service providers since those providers enter into tailored contracts with their enterprise customers.

Enabling enterprise customer exemptions and/or ending outdated regulatory filing and other obligations are not generally controversial issues where such requirements are no longer justified due to market developments and the ability for enterprise customers to negotiate terms of service in SLAs. In these cases, there tends to be broad support as there is no real loss for the regulator, and no negative impacts on customers or competition.

Recommendation:
Therefore, there should be a requirement to clearly distinguish enterprise customers/ services from retail customers/ services under the Act/ License, which is presently not in place. The enterprise offerings should not be mandated to follow the compliances/ regulatory regime applicable to the mass market/consumer service providers, as this only adds to the cost and ease of doing business of the former without any significant benefits to any stakeholder.

(ii) Issue with Emerging Technology/Services:

Current license/policies are largely written with a focus on the consumer/retail voice segment and do not necessarily serve the needs of enterprise data/ voice customer networks and services. Beyond the traditional telecommunications landscape, emerging and future technologies are likely to be instrumental in the development of the country and the roll-out of innovative services, applications, and products that promote 'ease of doing business' which is also the aim of the Indian Government. For example, an established TSP can be enabled to serve as an interconnect exchange for all TSPs to ensure interconnection is truly carried out on a non-discriminatory and competitive basis.

The new trends include connected cars, augmented reality, virtual reality, Artificial Intelligence (AI) e-health, e-medicine, IOT and universal communications. Software Defined Networking (SDN)/ Network Functions Virtualization (NFV) aim to reduce the network's complexity and provides scalability with reduced operational costs by using standardized hardware and virtualization like SDN, NFV and Cloud computing technologies. These technologies are being developed using virtualization as a key concept to reduce the capex and opex. This will help in steering up digital commerce and services.

The most relevant usage scenarios for SDN and NFV appear to be:

- Virtualization of Core Network.
- Virtualization of Content Delivery Network (servers will move to Software Define – Data Centres)
- Virtual Network Platform as a Service (VNPaaS), (NaaS)
- Virtualization of support infrastructure (network management, monitoring tools, billing, service creation, *etc.*).

SDN/NFV will have a positive effect on network resiliency as this technology enables a quick connection via any connectivity mode and continuous relocation of network functions in the network in disaster situations by the inherent resilience and load balancing nature of SDN/NFV-enabled networks. Virtualization is likely to improve continuity of network performance even under difficult catastrophic conditions.

Recommendation:

Therefore, it is recommended that, the licensing framework should be flexible to accommodate rapid changes in technology. In doing so, the policy framework should consider following principles:

- Licensing framework should achieve its objective in the most efficient way and set the basic rules regardless of the technologies, industry structures or legacy regimes.
- Licensing framework should be technology-agnostic. It should consider all technological means for achieving the desired objective.

A comprehensive License reforms exercise is imperative as against piecemeal License amendments. Most countries have already adopted emerging service/ technology such as **software-defined based network, unified communication, network functions virtualization techniques and cloud-based platforms without any restriction on underlay connectivity.**

Thus, we believe that removal of unwanted licensing/regulatory restrictions, in terms of scope of services under licenses, will certainly boost the enterprise data services market, which will be a major contributor to the growth of "Digital India" mission. Hence, these reforms will help to bring more investment and growth opportunities to the overall business, which also helps India to become the innovation and technology hub of the world.

(iii) Licensing Framework:

We fully support any steps taken for healthy competition in the sector, policy toward non-discriminatory access to telecom resources to all TSPs, and light-touch regulatory regime. However, our members also believe that the current situation of the telecom sector in India requires more regulatory simplification in terms of licensing and the need to resolve the many existing issues. To increase the competitiveness in the Indian telecommunications industry, the regulatory regime should facilitate less burdensome entry of new players with new technologies. TRAI consultation for rationalization of entry fee and BG is a positive move in this direction. Further, one of the examples could be streamlining the license application for internet telephony service providers authorised under UL (AS), by permitting nationwide authorisation based on the nature of services which is not as dependent on the infrastructure and does not cause any financial loss to the government. **The principle should be to move towards unified licensing and convergence.**

1. Removal of multiple levies of License Fees in B2B:

Currently, telecom service providers (Access, ILD, NLD, and ISP) are not allowed to take a deduction of the charges paid towards bandwidth / leased lines procured from other telecom operators. The definition of revenue under the telecom license needs to permit charging a license fee on the principle of value added, to prevent cascade impact on consumers resulting in the levy at multiple levels. Multiple levies of License Fee lead to Double Taxation under the telecom licenses. ILD, NLD, Access and ISP licensees are not permitted to take a deduction of the charges paid towards bandwidth / leased lines procured from other telecom operators, although the same is allowed in few cases in the form of pass-through charges for voice traffic.

Recommendation:

Request TRAI for recommendation towards the implementation of the NDCP-2018 especially as it relates to the following – *"2.1 (b) ii. Reviewing the concept of pass-through charges to align the same with the principles of input line credit thereby avoiding double incidence of levies."*

DoT has already removed the multiple levies of License Fee in the UL (VNO) license vide license amendment dated 24th October 2018 by permitting deduction of charges paid to NSOs after TRAI recommendation. We recommend that similar to VNO licensee, NLD, ILD and Access licensees should also be allowed to claim bandwidth charges paid to other TSP as pass through.

2. Levy of License Fee on Revenue from Non-Telecom Activity:

DoT has allowed the deduction of revenue from operations other than "telecom activities" from Gross Revenue to arrive at Applicable Gross Revenue (ApGR). The recent AGR amendment did not satisfactorily define either telecom activities or non-telecom activities. Consequently, there are good chances that many revenue streams that may appear to be ancillary or incidental to telecom services will also be included in AGR while computing License Fees.

There is a need to define telecom activities specifically and limited to licensed telecom activities. Amendment should clearly allow the reduction of revenue from operations other than licensed activities from Gross Revenue to arrive at ApGR.

Recommendation:

To avoid any misinterpretation and remove any ambiguity, it is recommended that DoT define telecom activities more specifically.

3. IOT/ M2M:

Policies toward IoT should be oriented on supporting global deployment of IoT solutions, thereby optimizing scale and reach of IoT within individual countries. The distinctions between IoT devices and traditional mobile phones should be recognized and the corresponding need for light-touch treatment of IoT.

Therefore, it is recommended that there should be a discouragement towards the creation of country-specific, IoT-specific regulatory frameworks and instead encourage development of regional or global frameworks. This includes:

- Encouraging appropriate application of existing consumer protection regimes (e.g., for privacy and data security) to IoT versus creating novel IoT-specific frameworks.
- **Roaming:** Promote a framework for the effective global deployment of IoT solutions using mobile networks and permanent roaming agreements between MNOs.
- **Standards:** Support continued development and adoption of international standards pertinent to IoT.
- **Taxes:** Avoid application of voice-based service taxes to IoT-based services, which may operate with very different revenue and business model assumptions.

4. Full-fledged infrastructure sharing:

One of the objectives of introducing different licensing layers is to promote building common telecom network/infrastructure and making more efficient utilization of telecom network/infrastructure. This objective can be achieved by providing an appropriate policy to allow sharing of core network elements. NDCP 2018 had made a provision to facilitate the same.
1.1 "(f) Encourage and facilitate sharing of active infrastructure by enhancing the scope of Infrastructure Providers (IP) and promoting and incentivizing deployment of common sharable, passive as well as active, infrastructure."

In the last few years, DoT has allowed sharing of passive and some of active (limited) infrastructure. However, there remain restrictions on the sharing of infrastructure between various telecom operators and infrastructure providers including ISPs. This has resulted in unnecessary duplication of infrastructure. The policy must allow sharing of the telecom infrastructure for optimum usage subject to mutual agreement between TSPs. This will lead to higher utilization, leading to reduction in OPEX for service providers and a better business case for infrastructure creators. Globally, there are no restrictions on sharing of infrastructure amongst the licensees' own licenses. The current need is to allow full fledge sharing of infrastructure. We recommend allowing full-fledged sharing of active and passive infrastructure between various telecom operators and infrastructure providers. Additionally, ISPs should be allowed to sell connectivity to other TSPs. Currently ISPs are not allowed to sell connectivity to other ISPs alone. ISPs can buy connectivity from other TSPs including ISPs.

Recommendation:

Therefore, we believe, the new legal framework will encourage infrastructure sharing among TSP and ISP for e.g., ISP should be allowed to share the infrastructure with NLD, ILD and access TSPs. Such measures will help in reducing costs and scaling up telecom infrastructure much faster to realize the vision of "Digital India".

5. Co-terminus License period even after paying full entry fees:

Co-Terminus license period condition under the UL-VNO License is required to be reviewed. *"This License shall be valid for a period of 10 years from the effective date of this License unless revoked earlier for reasons as specified elsewhere in the document. Validity period for service(s)* *authorized under any Chapter of Part-II of this Unified License, at a later date, shall be co-terminus with the validity period of this UL (VNO)."*

The current validity of the UL-VNO license should be 20 years (not 10 years) to be on par with UL licenses. As mandated, different authorization taken at different times are to be terminated with the end of first license even after paying full entry fees for all licenses. The validity of any additional authorization will be co-terminus with the validity of the first / existing authorization without any prorate rebate in the stipulated entry fee. The VNO license is valid for 10 years. Any additional authorization applied and granted for example after 3 years will be valid for the remaining 7 years only. However, the amount of the entry fee must be paid in full instead of an amount proportionately reduced by 3 years. The validity of the additional authorizations acquired during the currency of existing license should either be for the full 10 years or with a pro-rata reduction of stipulated entry fee if the validity for additional authorizations is to be co-terminus with existing license. A company who has taken a VNO license for one of these services and plans to add any additional authorization later, but within the license validity of the first authorization, is required to pay the full stipulated entry fee for the remaining years with no pro-rata reduction in the entry fee. This has resulted in creating an unfair condition to VNO licensees.

Therefore, we recommend removing this unfairness and it should be on pro-rata basis.

- License validity should not be co-terminus with the validity of first authorization.
- The license validity should be for full 10 years as full entry fee is required to be submitted.
- If not, then the entry fee should be reduced on a pro-rata basis on the principle of commercial reasonableness and fairness.

Recommendation:

Therefore, we recommend that the new legal telecom framework to support the license conditions imposed to be on par with other telecom licenses.

6. Multi-Parenting:

Multi-parenting is allowed in all service authorisations except for some of the access services in the UL VNO License. This restriction is a key bottleneck to the growth of UL VNO in India. UL VNO licensees are not able to provide the best possible/available services to the customers due to this restriction.

(i) Multi-parenting in Wireline Access:

- In the case of wireline access, the UL VNO Licensee with Access Authorization is allowed connectivity of different NSOs at different EPABX. As per the mandate under the license, the licensee is not permitted to connect more than one NSO at a particular EPABX.
- On 2nd March, 2020, DoT amended the UL VNO Access Category B by adding clause 5.2 in Part-II Chapter-XVII of the license to allow the connection to more than one NSO at a particular EPABX subject to non-breachable logical/ virtual partitioning in the EPABX and logical separation of junctions from different NSOs with no inter NSO call flow.
- No such amendment was made by DoT in UL VNO Access Authorization to allow for connectivity of different NSO at a particular EPABX.
- While connecting multiple NSOs on a particular EPABX is allowed for UL VNO Access category B, the same is disallowed in case of UL VNO Access Authorization.

Recommendation:

We recommend removing the existing restriction of not allowing multiple NSOs on a particular EPABX in case of UL VNO Access Authorization and allow multiple NSOs on a particular EPABX with the same conditions of logical bifurcation, as it is mandated in case of UL VNO Access Category B.

(ii) Multi-parenting in Wireless Access:

- For access service through wireless, multi-parenting with NSOs is not currently allowed. TRAI recommendation had cited the reason for this restriction based on complexity in AGR calculation with respect to different SUC and LF charges.
- License fee is already uniform for all licenses over the last decade and DOT is also working towards zero SUC. Moreover, complexity of calculation cannot be a suitable reason to put restriction on multi-parenting. The technical and financial arrangement with respect to interconnection will continue to remain with the parent NSOs and UL VNO.

The current multi-parenting restriction is arbitrarily forcing a UL-VNO to an access service provider and forces the customer to accept whatever service, price, etc. are offered. This clause impinges on the ability of a VNO to effectively compete in the market by restricting choice and tying its fate to a single access service provider thereby forcing customers to accept whatever quality and coverage is provided. From a business perspective, the multi-parenting restriction is a critical bottleneck to the growth of UL-VNO in India.

Recommendation:

We recommend allowing multi-parenting for wireless access to provide more choices, better QoS to customers, including having options for redundancy to the last mile. This will significantly help the enterprise customers who are requiring high-quality service from UL VNOs.

7. Issues related to Remote Access (RA):

Global telecommunication providers have distributed management of network infrastructure across the globe with varying skills across time zones. Telecom licensees in India need to go through a long drawn, rigorous Remote Access approval process as required by the DOT January 2013 RA Guidelines. Today, especially in the Telecom and Broadcasting Industry, when India is looking to attract foreign investments and increased opportunities by amending its foreign investment policies, Remote Access approvals remain a major bottleneck and an issue of concern for telecom service providers. Easing the approval processes for RA is essential for telecom companies to continue to operate their networks effectively and provide uninterrupted support to the customers across multiple time zones.

We recommend that the RA approvals be permitted by intimation, subject to compliance with all other existing license conditions and guidelines, subject to the following conditions.

- **Preferred Countries:** DoT may consider a differentiated approach to RA approvals with respect to foreign locations in countries that are considered non sensitive from a security perspective and countries that are India's strategic partners from a defence and security perspective. For example, foreign location in a country, using India for their infrastructure management across various critical industries like Telecom, IT, Banking, Airports and Ports, create massive employment opportunities and foreign exchange earnings for India. Correspondingly, India may extend such countries a preferential treatment including, USA, Canada, European Union member states, UK, Australia and Singapore; and

- **Already Approved RA System:** If the RA approval has been bestowed earlier to a licensee for a Foreign/Indian Location, the addition of a new foreign/Indian location with the same architecture should not require fresh approvals or inspection and should be deemed approved upon intimation.
- Subject to the above, the RA process can be simplified by having a condition similar to the amendment dated 3 August, 2016 to Section 7 'Provision of Service' of Unified License (General Conditions) which provides the licensee to commence services while demonstrating all required compliances within a specified period.

In this context, we would like to mention some of the policy/regulatory restrictions which should also be considered.

8. Removal of IP-PSTN Interconnection:

Seamless interconnection and convergence of services, networks and devices is the need of the hour to provide a consistent customer service. Convergence leads to increased efficiencies, lower costs, and an improved experience for customers. The new Telecom Policy, NDCP-18, also addressed the benefits of convergence in areas such as IP-PSTN switching. The key benefit of the convergence is the ability for the end users to communicate and collaborate across the enterprise, with quick and easy access to the information and resources they need thereby creating a more agile, collaborative enterprise. With this technological development, seamless interconnection, such as Circuit-IP, unrestricted internet telephony, IP-IP or CUG –PSTN are essential in providing innovative and affordable services to the enterprise customers. Regulatory restriction should not be the reason for impeding the growth of the sector and deprive the technological benefit to the end users/customers.

Recommendation:

We recommend allowing the TSPs to have IP-PSTN & CUG-PSTN connectivity by removing the current regulatory restriction, in order to increase competition level for the benefit of the growth of BPO/KPO sector in India. In most countries, this has been allowed without any constraints policy makers/ regulators.

We therefore request DoT to review and streamline the process and implement the recommendations of TRAI as well as the above-stated objective of NDCP. This will reduce the litigations and boost the confidence of the investors in the sector.

Conclusion:

Regulatory simplification is an important tool that can ensure that an adequate framework exists for innovation and experimentation with new services. Policies should not create regulatory barriers for services, but rather establish an innovation-friendly environment that is open to new technological advances and service experimentation. It can lead to better regulatory outcomes that minimize unnecessary compliance costs and inefficiencies and thereby lead to a more prosperous environment in which innovation thrives and economic competitiveness is strengthened. More broadly, where regulators have simplified regulation for the provision of a wide range of communications services, the regulatory outcomes have been positive, telecom service providers have accelerated the offering of innovative services, and their customers have received significant benefits. Because enterprise customers hold greater negotiating power than mass-market consumers, regulatory streamlining for this market segment is especially warranted, and enables Regulators to still achieve broad policy goals relating to consumer protection and competition.

To conclude, we summarize our key recommendations for Regulators:

1. Regulators should support regulatory simplification, which leads to numerous benefits including:
    a. Greater regulatory certainty and predictability to regulators, domestic and international players;
    b. Minimization of unnecessary compliance costs and inefficiencies for businesses of all sizes;
    c. A more prosperous environment in which innovation and investment from startups, SMEs and large businesses can thrive, in particular for new technologies and services;
    d. A boost to economic competitiveness and attractiveness which will be critical for economies to promptly recover from Covid recessions and attract international talent.
2. To achieve regulatory simplification, Regulators should rely on existing horizontal competition and consumer protection rules, and deregulate where appropriate, rather than incrementally build on historic — and often outdated — sector-specific laws and regulations;
3. Regulators should consider the unique characteristics of enterprise services and the benefits of eliminating outdated regulations or taking a light-touch approach when updating applicable rules;
    a. Quality of service and data reporting requirements are ill suited to the enterprise market and should be avoided or removed.

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1st September 2022

To,
Shri. Naveen Kumar
Director
Department of Telecommunications
Ministry of Communication & IT
Government of India

Dear Sir,

Greetings from SatCom Industry Association (www.sia-india.com)

At the outset, we would like to congratulate the Government of India, Ministry of Communications, Department of Telecommunications for initiating this consultation process on the need for a new legal framework in the telecom sector. The initiative to overhaul the legal framework governing Telecommunication in India to keep pace with modernization is forward-looking and would be a huge fillip for the SatCom sector.

SatCom Industry Association of India [SIA-India] welcomes the opportunity and is committed to a positive engagement in this consultation process by collating views and learnings from our members and associates spread across various geographies.

As mentioned in the introduction to the consultation, the technology and the nature of telecommunication have undergone a massive change since the original laws came into effect. The department of telecom has done a great job of trying to bring in amendments to keep pace with the technological developments and business trends, however, at some point the amendments become too unwieldy and there could not be a better time to consider a new legal framework in telecom sector.

It would, however, be a mammoth task to string together a new framework through all the transformations that the industry has gone through. Hauling up the regulatory framework that is based on acts more than 100 years old, to a newer version that relates to the latest technology, business and governance trends will however need a much more serious effort than the time allocated. We had requested wide our letter dated 18.08.2022 for an extension of the submission deadline by one month, but we understand the deadline is extended by one week and the new deadline is 1st of Sep, 2022.

In the interest of a robust regulatory framework, we would have wanted more time to contribute more effectively to the consultation process, however, to meet the deadline, we are submitting the satcom industry initial comments, that has the potential to be more potent if the deadline were to be 30th September 2022 instead of the current cut-off date.

Please do let us know if the deadline for submission has been extended for further period, which may allow us our detailed comments.

We look forward to working closely with the department of telecommunication in this process and always assure you of our best efforts.

Sincere Regards,

Anil Prakash
Director General
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SIA-India Submission on Consultation Paper [CP]: 'Need for a new legal framework governing Telecommunication in India

The objective and Scope of the Consultation Paper need to be well defined

The very objective behind this consultation is to do away with the antiquated regime and bring a modern and future-ready legal framework, however, it attempts to address just a few parameters.

The CP says, 'India needs a new law which is clear, precise, and attuned to the realities of the sector for realizing the potential of telecommunication'. However, the paper flips across macro and micro issues in different sections of a short document and hence lends itself to ambiguity and a sense of incompleteness in achieving the desired outcomes that this consultation paper aims to achieve.

The consultation paper in the introductory lines states to promote a 'Universal, resilient, secure, accessible, and affordable telecommunication is indispensable for an inclusive India as we strive towards the ideal of "*antyodaya*".' This in itself is an inadequate objective to guide the larger framework of a new legal framework.

Consultation Paper needs to define Modern Technologies

The CP talks about adopting and augmenting modern technologies and adhering to global best practices. Satellite communications play a vital role in the global telecommunications ecosystem in Satellite Internet • Cellular Backhaul • Enterprise Networks • Off-Shore Connect • Maritime Services. Satellite Communication (*SATCOM*) ***Market*** size was valued at USD 71.6 Billion in 2021 and is projected to reach USD 156.7 Billion by 2030.

Role of satellite connectivity in India has a very significant and strategic role to play. With more than 1300 Gati Shakti projects under National Master Plan by 2024, the need for broadband connectivity will become highly critical. The connectivity needs to be served through multiple access technologies for an added layer of resiliency and efficiency. Shipping, Ports, Waterways, Tolls, roads and Highways are increasingly blurring the lines between remote and near. Covid-19 has further pushed the idea of dynamic and reverse migration between rural and urban settings. National Missions like SMART CITIES, UDAAN, National Health Mission, New Education Policy and PM WANI – all align well with the DIGITAL INDIA mission and need multiple access technologies. Space-based satellite services are critical, along with terrestrial connectivity.

Technology Neutral Focus is Must for Non-Terrestrial Technologies

As mentioned in the introduction to the consultation, the technology and the nature of telecommunication have undergone a massive change since the original laws came into effect. The department of telecom has done a very good job of trying to bring in amendments to keep pace the technology and business models development, however, at some point the amendments become too unwieldy and it could not be a better time to consider a new legal framework in telecom sector. India in the last one and half decades has also adopted several strategies and brought out key policies such as BharatNet, 'Broadband Policy 2004', 'Digital India Programme 2015', 'National Broadband Mission 2019', 'National Digital Communication Policy 2018' which amended, augmented or replaced many aspects of the National Telecom Policy 2012.

All these policies have acknowledged the need for modern technologies, however, have had a predominant focus on terrestrial technologies and very limited focus on space-based technologies in practice.

The exploitation of space communication technologies in India has remained limited to broadcasting, and very few VSAT terminals are in use. The various international best practices suggest how regulators are balancing the policies to support the development of telecom services based on various technologies like mobile services, satellite services, wi-fi etc.

The current emphasis on limited technology choices has kept a huge section of the nation and its citizens bereft of the advantages that alternate technologies like satellite communications, public Wi-Fi etc or combinations of multiple technologies which could have been enabled many years back.

The new Framework must define the Value chain and form a Balancing Act

The CP states that the new law should provide framework for various players in telecom value chain to enable investments. The paper needs to define the Telecom Value Chain, the evolution of new players, and new avenues of growth. There has been a major shift in the traditional definitions of business models— wired, wireless telecom providers with the entrance of satellite operators.

The telecommunication infrastructure is the driver of GDP growth and employment generation by enabling digital governance that emphasizes data driven and people-centric delivery of goods and services to citizens and enterprises. The overall legal framework must balance the requirements of the overall telecommunication sector and its stakeholders. The stakeholders include the service providers bringing a mix of capabilities enabled by different technologies that includes Mobile telephony, Satellite communications, Public Wi-Fi, Fibre network etc. Each of these bring unique advantages and complementarity to the overall telecommunications infrastructure and capability to the nation.

As the CP states rightly that the new law needs to be attuned to the realities of the of telecommunication in 21st century India. Both terrestrial and non-terrestrial technologies will augment the digital connectivity reach to the corners of the nation.

Spectrum Allocation based on Global Best practices:

The CP states that the spectrum will be assigned to best serve the common good and enable widespread access to telecommunication services and that such a legal framework for Spectrum needs to enable the utilization of the spectrum in a liberalized and technologically neutral manner. This noble objective however needs to be aligned with the massive deliberations done at the ITU in terms of spectrum identification for different services with respect to the needs of different ITU regions. An ITU harmonized spectrum identification also facilitates the entry of new technologies and competitors into the market, encouraging and promoting innovation.

Since the CP as one of its objectives emphasizes upon adopting the global best practices, the country too needs to keep up with the global best practices, for spectrum for satellite. As per the global practice the spectrum for satellite use should be allocated in an administrative manner that is different from spectrum allocation for exclusive use as in the case of mobile services. Administrative allocation of spectrum for satellite use would help strengthen India's position in global economic setting even better.

Having stated the above, It is important that the whole of government approach is exercised and the overall regulatory framework is guided by the following objectives:

- Any new framework must encourage all digital communication technologies without a preference for limited technologies.
- Connectivity to the remotest corner of the country at affordable prices, for personal, enterprise and government use.
- Flexibility and agility of regulatory framework to adapt to changing technology and services trend.
- Ease of doing business for the industry stakeholders involved.
- Harmonized with global best practices arrived at international forums like ITU
- Spectrum allocation must be based on International best practices.

With respect to the objectives outlined above, SIA-India has the following key submissions:

1. The proposed reforms/reviews to the extant Wireless Acts/Regulations regime and substantive law should be soundly based on consistent, transparent and concurrent administrative principles, which are in tune with international practices and regulations in the telecommunication sector across the globe and truly reflects the legislative and regulatory acumen/standards of India among the comity of nations. The new rules and regulations should intend to implement enhanced administrative regime and address perceptions of a lack of robustness in decision-making, potential for confirmation bias and failure to meet the standards.
2. It may be ensured that the Rules/Regulations/Guidelines would be framed in a clear and unequivocal manner and provide a wide degree of latitude in its procedural approach following the best practices both for the regulators and stakeholders.
3. It should be emphasized that telecom sector is undergoing rapid technological evolution for the last two decades. Therefore, it is important that the rules/regulations are supportive and well managed to meet the growing needs of the stakeholders. Taking account of the evolving global telecom market, the review should strengthen the existing regulatory framework and additional regulatory approach, being contemplated, should remain relevant, effective and fit for evolving technological and market influenced factors.
4. To provide adequate provisions to ensure regulatory certainty and promote investment. Multiple layers of permissions and requests to DOT, WPC, SACFA etc that create project delays and lead to missed opportunities and cost overruns must be removed/eased. It is essential that both DOT/WPC and licence holders understand where the boundaries lie. There should be no ambiguity so that the licence holder with genuine intentions should not be penalized whereas those demonstrating rogue behaviour should not demonstrate plausibility and subject to proportionate penalties to deter recurrence.
5. The framework needs to provide clear understanding with spirit that should ensure minimal potential for different interpretations to avoid any requirement of judicial review.
6. Broadband policy should be at forefront wherein all media (terrestrial and space) should be encouraged without any discrimination with respective global practices in place. The current emphasis on limited technology choices of fibre laying and mobile coverage has kept a huge section of the nation and its citizens bereft of the advantages that alternate technologies like satellite communications, public Wi-Fi etc or combinations of multiple technologies could have enabled many years back.

7. It is of real concern that the current process of issuing licences/ clearances is time-consuming and cumbersome. It is highly essential that a robust online single-window platform should be made available to the stakeholders and the cases/requests should be processed in a transparent manner within a reasonable stipulated period. Any innocuous or unforeseen pitfalls for the delay in the process be made known to the stakeholders. In this regard, a clear timeframe shall be notified.
8. Ease or doing business and enhancement to policies that encourage FDI in India should be a focus of any framework
9. DOT should make the complaint/grievances processes of individual/organizational licence holder accessible through accessible channels in-clear/easy to understand language and due process/channels be implemented to address the issues. DOT should notify a binding and indicative timeframe for the redressal of the complaint/grievances. DOT should ensure that it has strong internal checks and balances integrated into its decision-making frameworks.
10. The proposed review should appropriately consider measures to encourage investment/innovation and promote competition while simultaneously ensuring that customers/end users are simultaneously protected from any unethical or unreasonable harms.
11. Recognition, acceptance and adoption to newer technologies must be the spirit of any framework. Examples include Dynamic Spectrum allocation etc for Mobile telephony and HTS versions and multi orbit scenarios for satellite communication. The existing framework has highlighted the limitations and inflexibility in introducing the technology advancements including ModCod enhancements, gateway flexibility, Spectrum refarming for mobile networks, VSAT terminal sizes etc. Ground station/gateway virtualisation, improvement in network architecture and antenna form factor must also be recognised to do away with legacy requirements and sizes in gateways and antennas. The fact that some of these changes had to be enabled by standards and licensing amendments highlights the need for the regulatory framework to be agile and adaptable to enhancements in technology, service and business models.

12. Even today the advantages that earth station in motion could bring across the large swathes of land in India has the artificial regulatory barrier of licensing instead of being an enabling framework. Role of satellite connectivity in India would only grow in significance. With more than 1300 Gati Shakti projects under National Master Plan by 2024, the need for broadband connectivity will become highly critical. The connectivity needs to be served through multiple access technologies for an added layer of resiliency and efficiency. Shipping, Ports, Waterways, Tolls, roads and Highways are increasingly blurring the lines between remote and near. Covid-19 has further pushed the idea of dynamic and reverse migration between rural and urban settings. National Missions like SMART CITIES, UDAAN, National Health Mission, New Education Policy and PM WANI – all align well with the DIGITAL INDIA mission and need multiple access technologies. Space-based satellite services are critical, along with terrestrial connectivity.

13. A framework should also take into consideration - global practices and examples, socio-economic benefits and respective quantification, cost-benefit analysis, reduction of digital divide, utility factor particularly in times of disaster management/emergency and climate change resolutions adopted by countries.

14. Telecommunications infrastructure and networks comprising of a broad range of technologies, from broadband and fixed-line networks to mobile connectivity and satellites quickly become outdated or is overtaken by evolving new technologies. In such a scenario, the Act should address the challenges of the investment by both the state and private sector and at the same time should leverage private sector capital, technology and expertise without any hindrances.

15. To give impetus to PM's Aatma Nirbhar Bharat Abhiyan (self-reliance) in the fastest growing telecom/satellite sectors, the review should safeguard innovations occurring in the sectors and protect intellectual property rights.

16. The proposed framework needs to enable the potential of the telecommunications to benefit the nation beyond geographical boundaries. In order to realize the vision of making India a space hub by the year 2030, satellite service providers in India should be allowed to establish gateways and TT&C centers (as being contemplated in the new space policy) that would serve both fixed and mobile satellite terminals in geographic areas beyond the borders of India and the Indian territorial waters in accordance with the rights granted to State under the international laws or that have been negotiated through bi-lateral agreements.

17. With the advent of High Throughput Satellites both in the geostationary and non-geostationary orbit, satellite broadband is becoming a very viable alternative for broadband connectivity, particularly in unserved and underserved areas of the country. The learnings from the expansive growth of mobile connectivity in the country that was enabled by regulatory reforms such as de-licensing of mobile phones under the Wireless Act, incentivisation of local manufacturing through PLIs and encouragement of technology absorption by national industry base through joint ventures, needs to be replicated for the satellite communications sector to benefit the nation and lead globally in the proliferation of satellite communications.

Besides these broader guidelines we also have concerns on certain sections of the consultation document that have the propensity of skewing the outcomes in a direction that is different from that desired for national benefit.

1. The section 16.a) mentions that the legal framework for spectrum needs to "Enable the utilization of the spectrum in a liberalized and technologically neutral manner and allow a spectrum assignee to deploy new technologies."
    a. Technology neutrality can be an aim towards achieving the desired outcomes and not towards the utilization of spectrum.
    b. The spectrum usage is identified collectively at the ITU, wherein India is also a signatory, towards an interference free globally harmonised services enablement for Satellite communications, Mobile services, Wi-Fi and additional services that use the electromagnetic spectrum. Alignment to Global ITU norms: The compliance & alignment to global ITU norms are important to ensure alignment to available eco-system of equipment, protocols etc. so that consumer of the services continue to get best services at affordable price.
    c. It will need to be ensured that existing services on the frequency range in question are not disrupt in anyway while execution of this repurposing of the frequency range.
    d. Spectrum should be allowed to use for specific purpose only for which the spectrum is being taken from the regulator. Periodic review should be done wrt effective utilization of spectrum and if spectrum is not utilized that assignee should be required to surrender the spectrum back to regulator so that regulator may open allocations to qualified service provider as per rules.
    e. In case if spectrum treatment were to be equal irrespective of technology and it is left to assignee to use as its own wish across various technologies then it may result in monopolistic market practice with only service provider with deep pockets, will control the overall telecom services in India.

2. Section 24 of the consultation paper mentions that 'The new framework also needs to consider ways in which to overhaul the current Universal Service Obligation Fund with the wider concept of a "Telecommunication Development Fund". This can address the larger public purpose of ensuring delivery of universal telecommunication service to underserved rural and urban areas, research and development of new technologies, and promote employment and training activities. This can enable the growth of indigenous companies in the technology space.'
    a. This dilutes the primary aim of the consultation paper to promote a 'Universal, resilient, secure, accessible, and affordable telecommunication is indispensable for an inclusive India as we strive towards the ideal of "Antyodaya".
    b. The USOF is also the vehicle where the technology neutrality is more appropriate to mention wherein the KPIs of the USOF and BBNL should be in terms of connectivity and reach for nation first rather than 'mobile first' of 'fibre first' policies that have kept the country behind other nations in providing G2C services and information across the geography.
    c. There are multiple vehicles outside of USOF that address the research and development of new technologies and promote employment and training activities for enabling the growth of indigenous companies in the technology space.
3. Time and again, several interest groups have tried to influence government decisions on spectrum allocations for satellite communications and Wi-Fi. The allocation of spectrum in public interest needs to align with international best practices.
    a. For exclusive spectrum use in mobile networks, spectrum auction has been the best tool to ensure efficiency of spectrum usage worldwide.
    b. The same tool however cannot be used for shared spectrum applications like Satellite communications or Wi-Fi. The international norm is for administrative allocation of spectrum for satellite spectrum that is aligned and harmonized as per ITU identification.
    c. Considering the above, it is important that a holistic view is taken w.r.t spectrum, so that different relevant technologies are allowed to co-exist, prosper, and serve the needs of various Industries/regions of India most optimally.

Conclusion

1. The overhaul of the telecom regulatory and legal framework is a serious exercise and should not be rushed through. Adequate response time should be available to stakeholders to collaborate with the department of Telecom in developing and evolving this new framework.
2. The Aim of the exercise needs to be sufficiently illustrated so that the acts, regulations and procedures that are drawn out align with the aim.
3. The satellite industry stakeholders through SIA-India are providing their comments on certain aspects of the existing framework and the consultation paper
4. We also raise concerns on certain sections of the consultation paper that goes against international best practices, global harmonization and standardization
5. We assure you of our cooperation always and hope to have additional consultations and request for comments towards this critical exercise that will impact the stakeholders across the ecosystem for decades to come.

Draft DIPA's Comments on Consultation Paper on 'Need for a new legal framework governing Telecommunication in India'

PREAMBLE

At the outset, we would like to thank the DoT for bringing out this Consultation paper for discussion on "**Need for a new legal framework governing Telecommunication in India**" and giving us an opportunity to provide our comments on the same. We appreciate the Authority for its constant efforts for growth of telecommunication infrastructure in the Country which carries utmost importance especially when the country is aiming to be on the verge of deploying 5G.

Indian Telecom Sector is governed mainly by the following Acts:

1. The ***Indian Telegraph Act, 1885.***
2. The ***Indian Wireless Telegraphy Act, 1933.***
3. The ***Telegraph Wires(Unlawful Possession) Act,1950.***
4. The ***TRAI Act,1997.***
5. The ***Information Technology Act, 2000.***

The Telecom sector is mainly governed by laws which are archaic and have long been outdated by the scorching pace of telecom evolution and development. In addition to that, sector like telecom, space satellite, broadcasting etc are converging and therefore there is need of futuristic comprehensive legal framework to bring all in single law to prevent any ambiguity and duplicity of authorities. Present set of laws are also not clear and precise resulting in numerous litigation which further hinders governance and economic growth.

Telecom service sector in India is facing a looming financial crisis. The steep fall in revenues and ballooning debt is hurting investments in telecommunication infrastructure, networks, and technologies. Latest set of reforms by government across AGR rationalization, free spectrum sharing, Annual compounding of interests, 100% FDI through automatic route and above all the moratorium of 4 years on dues to the government will improve cashflows, promote healthy competition, attract foreign direct investment, etc. However, further steps are required to have updated uniform comprehensive legal framework and industry friendly policy framework for smoothly running the business which supports this critical industry which in turn is essential for almost every other sector as telecom connectivity is pivotal for several services and applications based on internet connection.

We will again appreciate the efforts by DoT to bring this consultation paper and giving us opportunity to provide our comments on the same. It is pertinent to mention and **request that industry comments should also be sought when draft laws are ready before they are passed by the Indian parliament.**

Our Heading-wise Comments on the Consultation Paper are as follows:

INTRODUCTION

1. Telecommunication has the potential to unleash the true power of India's economy, accelerate socio-economic transformation and enable achievement of the vision of an "*Aatma Nirbhar Bharat*". Telecommunication is an enabler of digital governance that emphasizes data driven and people-centric delivery of goods and services to citizens and enterprises. Universal, resilient, secure, accessible, and affordable telecommunication is indispensable for an inclusive India as we strive towards the ideal of "*antyodaya*".

DIPA's Comments:

DIPA is in total agreement with this view regarding the telecommunication's potential. Though many forward looking steps have been taken but much is desired to be done specially in the legal framework governing the same. Universal, resilient, secure, accessible, and affordable telecommunication is indispensable for an inclusive India.
It is suggested that "***Digital Connectivity be declared as a Fundamental Right***" under the new act as 'Connectivity' if fundamental for survival of human race in the modern world.

2. The criticality of telecommunication was underlined during the COVID-19 pandemic. Telecommunication emerged as a lifeline for the economy by enabling digital economy to function. Interactions that form the core of a well-functioning economy migrated from physical mode to digital mode. Particularly, remote working and online education gained popularity and societal acceptance. Telecommunication helped sustain demand for services and enabled people to remain connected.

DIPA's Comments:

Telecommunication is a critical service which has kept our economy moving even during the Covid-19 pandemic period. Amid the situation arises due to COVID 19 pandemic and lockdown/curfew, the telecom infrastructure and telecom services continues to play a vital role for citizens of India as the usage of essential telecom services have grown manifold as several organizations have adopted digital e-learning, e-services, OTT platforms, e-commerce and e-governance etc. Its importance in post Covid-19 pandemic cannot be over-emphasized.
The ability for workers to continue employment during the pandemic differed significantly on the basis of the nature of the employment (for example between informal in-person, manufacturing, services or knowledge activities, among others) and the robustness of the communications infrastructure workers have access to. While much economic, learning and even healthcare

activity was able to shift online, the pandemic highlighted the importance of effective and robust digital infrastructure. This realization has led to significant immediate and long-term policy responses by governments, and investments by commercial and other entities.

The telecom services are critical services, and telecom assets should be declared as critical assets for nation building. No authority or person should be allowed to disrupt this critical service which is now the backbone of economy. Any disruption to telecom service should be pre-approved by DoT and in absence of which it should be treated as non-bailable offence.

3. The number of telecom subscribers in India has grown from 1.5 Cr in 1997 to more than 117 Cr today. This represents a phenomenal 19% CAGR over a period of 25 years. India is today the second largest telecom market in the world.

DIPA's Comments:

Yes, India has shown phenomenal growth in telecommunication sector, but with right legal and policy framework, India has potential to grow at much faster rate keeping in tandem with fast evolving technologies and can certainly become the largest telecom market in the world.

4. Telegraph was first installed in India in the year 1851 and telephone exchanges were set up in the early 1880s. In light of these developments, the Indian Telegraph Act, 1885 ("Telegraph Act") came into force on 1st October 1885. To regulate the possession of wireless telegraphy apparatus, the Indian Wireless Telegraphy Act, 1933 ("Wireless Telegraphy Act") was passed and it came into effect on 1st January 1934. Similarly, to regulate the possession of telegraph wires the Telegraph Wires (Unlawful Possession) Act, 1950 ("Telegraph Wires Act") was passed and it came into effect on 1st April 1951.

And

5. The technology and the nature of telecommunication have undergone a massive change since these laws came into effect. To keep pace with emerging technologies, telecommunication legislation has evolved with time in most jurisdictions. These include United States (1996), Australia (1979), United Kingdom (2003), Singapore (1999), South Africa (2000) and Brazil (1997).

DIPA's Comments:

Post mobile telecommunication era, rapid changes and advancement has taken place in telecommunication but the laws governing the same were framed pre-independence era and therefore have long past their ability to cater the growing needs of new age complicated telecommunications and digital infrastructure. Despite having its telecommunication revolution in 90s, India is already two decades behind in getting our telecommunication laws evolved and relevant for present scenario.

The Indian Telegraph Act, 1885 is one of the oldest Legislations still in effect in India and the Act to amend the law relating to telegraphs in India .

For any country and economy to grow and lead, Laws shall help in improving the efficiency of governance. DIPA is in total concurrence with the central govt. outlook that Laws need to be consonant with the times.

There is urgent need now to enhance the scope of telecom infrastructure providers. On several occasions, Telecom Regulator has also been recommending for Enhancement of IP-1 scope to include active elements such as Antenna, Feeder Cable, Base Station, Transmission System, RAN, Small Cells, IBS, Edge Data Centres etc.

a. In the new laws/Acts, Scope of IP-1 registration should be expanded.
b. All eligible service providers should be allowed to obtain infrastructure from IP-1.
c. Scope should include, but not limited to, RoW, Duct Space, OFC, Tower, Feeder Cable, Antenna, Base Station, IBS, DAS etc.
d. IP-1 scope shall not include core network elements such as Switch, MSC, HLR, IN etc.

A neutral host like IP-1, not only provides the required network infrastructure in a cost-efficient manner, but also allow operators faster time-to-market, besides attracting investments.

As the world attempts to rebound from the COVID-19 crisis, national ICT policies, broadband plans and digital strategies are required to fully embed and integrate digital infrastructure, ensuring adoption and use of Internet services and applications in order to best leverage the potential for digital transformation to help transform society and ensure no one is left behind and left offline.

Due to the ubiquity of digital infrastructure across business, government and at the individual level, approaches to policy on broadband are increasingly incorporating other sectoral issues, and vice-versa. The increasing reliance on digital infrastructure, services, and applications in nearly every sector and facet of economies and societies is made clear by the overlaps and engagements in policy issues between sectors and the subsequent government departments and ministries responsible for the sets of issues in those domains. Organizations around the world are developing their own internal digital transformation strategies as well as incorporating digital infrastructure advisory into their project work.

6. Emergence of new technologies such as 5G, Internet of Things, etc. among others offer many opportunities to transform the lives of millions of Indians. It is important to have a modern and future-ready legal framework which addresses the realities of telecommunication in 21st century India. 'Azadi ka Amrit Mahotsav' is an opportune time for reimagining India's

telecommunication legal framework. India needs a new law which is clear, precise, and attuned to the realities of the sector for realizing the potential of telecommunication.

DIPA's Comments:

- The new legal framework to be framed not only need to cater the current scenario but also be future ready as change and advancement in technologies is going at a brisk pace.
- DIPA is in concurrence with the view that India needs a new law which is clear, precise, and attuned to the realities of the sector for realizing the potential of telecommunication
- The new legal framework shall cater the new technological advancement available or may be available in next 10-20 years such as 5G, IoT, Small cells, Use of Street furniture etc.
- The new legal framework must be comprehensive to remove the ambiguity and point of contention regarding the subject matter being under center or state list. It will help in reducing excessive regulations, litigation and pending cases.
- The new legal framework must make sure there is no multiple levy of charges or approvals as this create hinderance in economic growth and governance.
- Telecom infrastructure creation for rollout of new technologies viz 5G, M2M/IoT and deployment of Smart Cities, requires huge amount of investment. **Considering the present financial health of the telecom operators, we feel that the enhanced form of infrastructure sharing i.e. Active Infrastructure Sharing by IP-1 is the only way forward for the industry. And that should be taken care of while framing the new legal framework.**

WHAT A NEW LAW NEEDS TO ADDRESS?

7. A new law on telecommunication needs to aim at establishing an enabling future- ready framework for the development of telecommunication sector and deployment of new technologies. Such a law needs to consolidate the existing laws governing telecommunication sector, while keeping in view global best practices. For this, a careful review of laws and best practices in other jurisdictions, will also be needed.

DIPA's Comments:

- To the extent possible, promulgate laws that can address new technology and innovation; give broad powers to the regulatory authorities to adjust to changes in the industry.
- Boundaries are blurring between various services such as telecom, broadcasting and IT services. Separate regulations lead to over regulation as well as confusion and red tapism. Therefore converged

regulatory infrastructure with common law is required for over lapping services.

- Need a brain storming while forming the laws regarding various issues such as if there will be technology evolution/disruption, conflict of interests, and will there be level playing field or law needs to provide that?
- The new legal framework must be comprehensive to remove the ambiguity and point of contention regarding the subject matter being under center or state list. It will help in reducing the excessive regulations, litigation and pending cases.
- The new legal framework must make sure there is no multiple levy of charges or approvals as this create hinderance in economic growth and governance.
- Ensure that users/subscribers/consumers, operators, and service providers have recourse at the regulatory agency.
- New law also need to address the issues of privacy and data protection as there will be huge growth in high capacity data centers and low capacity edge data centres. Data protection is extremely important in scenario where everything is connected.
- The new legal framework should be applicable and inclusive of multiple ministries of central govt too. This will be in alignment with spirit of PM Gati Shakti.

Inclusive, innovative partnerships that leverage the unique strengths of each participant in digital infrastructure development are required to translate roadmaps and action plans into concrete achievement. Towards this there is an urgent need for enhancement of scope of Telecom Infrastructure providers. Majority of the **Industry and Government stakeholders including TRAI agree that scope of IP-1 registration should cover both passive as well as active infrastructure** to encourage deployment of common sharable infrastructure and the same needs to be implemented at the earliest.

NDCP-2018 gazette notified by the Government in Oct'2018 envisage enhancement of scope of IP-1 vide para 1.1(f) as below:

"Encourage and facilitate sharing of active infrastructure by enhancing the scope of Infrastructure Providers (IP) and promoting and incentivizing deployment of common sharable, passive as well as active, infrastructure."

8. Comprehensibility of law for citizens is a desirable goal. Any new telecommunication law needs to be drafted in a plain and simple language so that any citizen, who is reasonably aware of the telecommunication sector, is able to understand the contents of the Bill.

DIPA's Comments:

- The new legal framework should be in plain and simple language and as comprehensive as possible. It should be Ensured that the law contains clear and unambiguous language describing the jurisdictions. Where there is more than one entity with jurisdiction over telecommunication matters, provide for and describe a coordination mechanism between these entities.

- Ensure that the law promulgated is clear, transparent, and precise. Avoid technical terms that are not understandable by the public or that may be unclear before a reviewing court. Define terms as far as practicable. It will reduce any ambiguity which fuels un-necessary litigation and hinders governance and economic growth.
- Laws and regulations drafted using plain, clear and concise language maximize readability, eliminate ambiguity and ensure compliance through easy interpretation with a view to enhance citizens' access and understanding of Laws of India and for matters connected therewith.
- Some of the main changes that can be brought about while drafting laws include avoiding the use of latin and jargon.
- Other nations, such as New Zealand, the United Kingdom (the UK), Germany, Austra-lia and Hong Kong, have kept the importance of plain language in mind while drafting laws. **For example,**
    - the UK has launched the Tax Law Rewrite Project (TLRP), which aims to redraft tax legislation in a simple, accessible format, by reordering legislation, using modern language and shorter sentences, and providing consistent definitions and clearer signposting.
    - Further, the USA has enacted the Plain Writing Act of 2010, which requires that federal agencies use clear government communication that the public can understand and use.
    - The New Zealand Law Commission has a manual to "propose ways of making legislation as understandable and accessible as practicable and of ensuring that it is kept under review in a systematic way" as well as "ascertain what changes, if any, are necessary or desirable in the law relating to the interpretation of legislation".

SIMPLIFICATION OF THE REGULATORY FRAMEWORK

9. The existing regulatory framework for the telecommunication sector is based to a large extent on Section 4 of the Telegraph Act which grants the Central Government the exclusive privilege to establish, maintain and work telegraphs. It further provides that the Central Government may grant a license on such conditions as it thinks fit, to establish, maintain and work telegraphs. Similarly, Section 5 of Wireless Telegraphy Act provides for licenses to possess wireless telegraphy apparatus.

DIPA's Comments:

Yes, the new legal framework is largely depended on Sec 4 and Sec 5 of Telegraph Act.

- This Act is over century old and terms used in these sections are outdated long time back.

- Some comprehensive terms should be used to make sections comprehensively applicable and do not leave any iota of doubt or ambiguity.
- Terms such as telegraph, poles, telegraph wires cannot fully portray/represents the words such as telecommunications, mobile connectivity, OFC etc and thus need updating in line with emerging trends and technology.
- With these existing words, often, these terms are left for interpretation and lead to unnecessary litigation.
- As telecommunications regulators move towards a notional next generation (or 'G5' as it is being called) of sector regulation, transitioning from "integrated regulation, led by socioeconomic policy" to "collaborative regulation with metrics-backed decision making", examples of collaboration between ICT regulators and non-ICT regulators are emerging globally. This needs to be taken into account
- Keeping in pace with the business and technological trends, the active/passive qualifications or differentiations should be realigned as Infrastructure and Services. Then will be in alignment with vision of PM Wani.
- In the new framework, the word licensee should always be used in conjunction with registration. For eg- Licensee/Registered IP

10. There have been rapid advances in telecommunication technology and corresponding proliferation of licenses, registrations, authorizations, permissions etc. in the telecommunication sector. The exclusive privilege of the Government to do things necessary in the context of telecommunication to provide telecommunication services, establish and maintain telecommunication network and infrastructure, is well recognized under laws of various jurisdictions. A new law needs to build upon this framework.

DIPA's Comments:

- DIPA also concurs with the viewpoint that at present even after the rapid advances in telecommunication technology and corresponding proliferation of licenses, registrations, authorizations, permissions etc. in the telecommunication sector, the new legal framework can be build upon the existing concept of exclusive privilege of the Government to do things necessary in the context of telecommunication to provide telecommunication services, establish and maintain telecommunication network and infrastructure.
- However, at the same time, there should be clear demarcation of the authority and exclusive privilege of the central govt. Multiple authorities like Municipal Corporations, local bodies, state government etc and their corresponding approvals should be done away with in clear legal mandate. No ambiguity or lack of clarity should be there.
- Multiple stages of approvals from various authorities hinders the governance and growth and create red tapism.

- Over the past decade, new communications technologies have become cheaper, more useful and more useable and in becoming cheaper, have been embraced by the majority of people in developed countries, as well as a growing proportion of those in the developing world. This dramatic change is bringing with it a range of new challenges, related, for instance, to privacy, security and digital content regulation. These challenges, even though seemingly outside the normal bounds of telecommunications regulation, are increasingly being seen as part of the new regulatory landscape: such is the revolutionary impact of technological convergence.
- No disruption of telecom services should be allowed by any authority such as local bodies, municipal corporations, village panchayats, state authorities or other central/state departments or by local people on different pretext such as EMF issues etc without prior approval of DoT. Non-compliance with this should be a non-bailable offence.

11. Such a new law also needs to provide adequate provisions to ensure regulatory certainty and promote investment. This would mean continuity of licenses and authorizations under the old regime. To minimize policy disruption, such a law needs to provide for continuation of rules, guidelines, administrative orders issued under the existing regime until superseded by new rules.

And

12. Furthermore, a new law needs to ensure that the terms and conditions will not be modified with retrospective effect to the detriment of the relevant entity.

DIPA's Comments:

- Yes, definitely this transition to new legal framework needs to be smooth and should not uproot the existing set up suddenly at one go as it will adversely affect the business and economic environment.
- The existing licenses and authorizations should continue as these have been obtained after due process aligned and economic costs. This will also ensure continuity of business with no disruption.
- New law for ensuring the regulatory certainty and promote investment should take care of following points:
    - Law should be in simple, plain and clear language with no ambiguity
    - Clear demarcation of authority. Only one approval through single window clearance should be the part of legal framework.
    - Other authorities should be taken on board and explained clearly about the new law to avoid any friction and lack of understanding
- New law should not be made into effect from retro respective date. Laws which have Retrospective effect have very high probability of disrupting the policy and businesses continuity. It also lead to ambiguity and may

result in numerous litigation resulting in hinderance of governance and economy.

- Retrospective taxation has the undesirable effect of creating major uncertainties in the business environment and constituting a significant disincentive for persons wishing to do business in India. Moreover, it might not pass the test of certainty and continuity.
- Regulatory credibility and legitimacy builds stability and is essential for attracting investment. This is particularly important in newly liberalized markets, where potential entrants need to have trust that their investments will be protected from arbitrary action and that further commercial development will not be thwarted by sudden changes in "rules of the game".
- A stable set of rules governing transparency will transcend political changes and outlast political appointments, ensuring a continuous regulatory record regardless of who is in charge of the regulatory agency or which political party is in office.

13. To enable investments, new law should also provide framework for various players in telecom value chain like service providers, infrastructure providers, RoW providers etc.

DIPA's Comments:
The new law should be comprehensive and its framework should include various other players in telecom value chain. This is necessary because of following reasons:

- If the various players are covered by different frameworks, then it may lead to friction between those separate frameworks as well as regulatory bodies governing them.
- Then it requires special coordination efforts and most of the time result in hinderance in governance and red tapism.
- Single law covering the whole chain reduces the ambiguity and gives clarity as well as continuity resulting in favorable business environment. This is turn will result increase in investor confidence and therefore more investments.
- To address the critical issues of access, affordability, and equality there will have to be new approaches that support the development of digital infrastructure, especially where it would otherwise not be profitable. Additional support for the confluence of factors beyond infrastructure is also needed to create and sustain socially relevant and functioning digital ecosystems. Establishing these new approaches will mean resolving complex concerns and attending to stakeholder interests that demand thoughtful multilateral engagement. It is imperative to come to solutions that reflect the interests of all parties, which do have a direct role to play to help create the global infrastructure and also help sustain social and economic ecosystems that will define the next century, and beyond.

SPECTRUM MANAGEMENT

14. Spectrum is a scarce natural resource. Its efficient use is in public interest. In fact, the International Telecommunication Union (ITU) has stated that spectrum "must be managed in the interests of the national community as a whole." Covid pandemic has shown that spectrum must be seen as a public good.

DIPA's Comments:

Spectrum should be used and managed as scarce natural resource in public interest and for that to happen:

- Spectrum should not be considered just as a medium for earning the revenue for the government.
- Government revenue needs and public good need to be balanced while generating revenue.
- Laws governing the spectrum must be flexible so that business and economic needs are catered without causing loss to.
- In the communications context, effectively enforcing laws can help protect consumers, ensure service quality, guard public safety and other services from interference, foster the efficient use of spectrum, and promote competition, growth, and investment in the sector. The Central Government may, grant any spectrum rights, licenses, authorizations, permits to any person or class of persons, or to all citizens by individual licenses or class licenses unconditionally or subject to such conditions, as the Central Government may impose and specify in the grant of the spectrum right, including conditions on the sharing and trading of radio frequency spectrum; and
- Provided that the Central Government may exempt any frequency or frequency band(s) from Licensing requirements unconditionally or subject to such conditions as the Central Government may impose.
- Central Government may employ best available method International/ Domestic to determine the grant of a spectrum right.
- Provisions need to created so that the Head of the Government can direct the Authority(DoT) to grant a spectrum right in any specific case of national interest.
- RF Spectrum is important for the national Defence as well as internal security. Availability of right amount of spectrum at the right time for deploying of various platforms is essential. While DoT should be the custodian of the entire RF spectrum up to 3000 GHz, under no circumstances, Spectrum sought by the Defence be denied by the Authority. Other ministries such as Home, Railways etc. be allocated spectrum on need basis.
- To ensure non-cartelization/ colonization of RF spectrum, Quantum of spectrum allocated to the Licensees should be done in an equitable manner. Not more than 25% of the total available spectrum should be held with each licensee at any time.

15. At present, spectrum assignment is done through a combination of policies and court orders. A new law needs to bring in regulatory clarity and lay down specific legal framework. The principle needs to be that spectrum will be assigned to best serve the common good and enable wide-spread access to telecommunication services.

And

16. Such a legal framework for Spectrum needs to:
    a) Enable the utilization of the spectrum in a liberalized and technologically neutral manner, and allow a spectrum assignee to deploy new technologies.
    b) Maintain policy continuity, allowing the existing spectrum (and exemptions) assigned at present to continue for a specified time period.
    c) Ensure flexibility to the Central Government for spectrum usage in public interest.

And

17. To enable more efficient use of spectrum, repurposing of a frequency range for a different use and re-arrangement of a frequency range is often required. Therefore, the law needs to contain provisions for re-farming and harmonization of frequency range. Further, it needs to provide that the Central Government may permit the sharing, trading, leasing and surrender of spectrum assigned, subject to prescribed terms and conditions, including applicable fees or charges.

DIPA's Comments:

1. Successful spectrum management is a long-term effort. The primary goal in all spectrum awards should be to encourage efficient spectrum use and the significant investment necessary to provide high-quality mobile services. When done right, mobile operators can feel safe to make investments to improve coverage and speeds This, in turn, leads to huge benefits for the whole of society.

2. To facilitate the successful deployment of IMT systems, the policy to make the spectrum available to the market should be clearly stated. In order to guarantee that the spectrum policy is aligned with the country's main objectives, it is important that telecommunications should figure on country's main agenda. In this way, regulators and other government institutions will have the necessary support to conduct their activities.

3. Another important aspect that can foster IMT deployment is related to the institution arrangements for policy delivery. The agency responsible for the spectrum policy should pay close attention to the role of each government agent (national and subnational) as well as other market

stakeholders. It is also important to avoid responsibility overlap or gaps in order to facilitate the achievement of goals, diminish tension between institutions, and encourage agreements.

4. In addition, all stakeholders should have a clear understanding of the decision-making process. This could be accomplished through the development of a code of practice for the decision-making process, enabling both regulators and operators to have a clear understanding of how regulatory decisions are made, and any applicable processes for appealing such decisions.

5. Roadmap: There is a need to lay down a clear roadmap for spectrum management which should state the requirement and availability of spectrum for each LSA as well as for the whole country. This roadmap should be made available publicly to ensure transparency.

RIGHT OF WAY

18. Despite the widespread availability of telecommunication in our country, tremendous improvement is required to ensure continuity of connectivity. As we move on to better technologies such as the deployment of 5G, their full value can be achieved only with smooth connectivity. Effective right of way is a pre-requisite to achieve this to enable expansion of telecommunication network and improvement of telecommunication services.

And

19. A new law needs to provide a robust regulatory framework to obtain Right of Way in a uniform, non-discriminatory manner for establishment of telecommunication infrastructure. Such a law also needs provisions to create an effective dispute resolution framework relating to Right of Way.

DIPA's Comments:

As mentioned, Effective right of way is a pre-requisite to achieve this to enable expansion of telecommunication network and improvement of telecommunication services, there is imperative and urgent need of streamlining effective Right of Way through single window and legal framework without any multi-level hinderances and approvals required. For this:

- Single-window clearance is an imperative for all RoW proposals at the level of the States and in the Central Government. All such clearances have to be time-bound so that TSPs and infrastructure providers can move rapidly to project execution. Ideally, single-window clearance should be administered online with a defined turnaround time. The reasons for denial of RoW permission should be recorded in writing.

- RoW agencies/authorities should mark the area for laying of underground cables at a significant distance from roads considering expansion plans over the next 10 years to protect the investment in fibre infrastructure and avoid service disruption during expansions.

- Strong administrative and legal provisions (even contractual) need to be put in place for payment of compensation in case of cable cut or cable damage by any agency including Government agencies, private agencies or private third party agencies executing the digging work.

- The only charges levied should be towards restoration or reinstatement which should be directly linked to restoring the surroundings to their original state. The RoW rates should therefore be standardized and fixed and uniform procedures must be brought into practice for all agencies.

- Provision should be there in law providing RoW right at the time of permission from central government and there should be no further approvals required from any authority or government body.
- There should be clear provision that **no other permission for RoW is required**.

- **ROW/telecom infrastructure Policy** which are being notified by respective state governments in alignment with RoW Rules are **not being implemented strictly**. There should be clear direction to all concerned authorities for implementation of the same.

- **RoW Rules should be made legally enforceable** on state and local authorities.

- There should be no RoW charges for remote villages (Non USOF)

- No GST on ROW permissions

- Here we will like to appreciate the efforts of DoT in coming up with the RoW 2022 amendments which will go a long way in development of digital infrastructure of this country. But now is the definite requirement of integrating these amended rules with PM Gati Shakti.

20. In line with the vision of PM Gati Shakti initiative, the new framework needs to incorporate provisions for establishing common ducts and cable corridors in infrastructure projects to ensure integrated development of infrastructure.

DIPA's Comments:

- As per vision of PM Gati Shakti, it will incorporate the infrastructure schemes of various Ministries and State Governments like Bharatmala, Sagarmala, inland waterways, dry/land ports, UDAN etc. Economic Zones like textile clusters, pharmaceutical clusters, defence corridors, electronic parks, industrial corridors, fishing clusters, agri zones will be covered to improve connectivity & make Indian businesses more competitive.
- The new framework should incorporate the non-ambiguous clear provisions for establishing common ducts and cable corridors in infrastructure projects to ensure integrated development of infrastructure.
- The new framework should have clear provisions for **mandatorily inclusions** with no exception of this requirement in the individual governing bye-laws, rules, regulations etc of the respective authorities responsible for the development of infrastructure.
- Therefore, in line with vision of PM Gati Shakti, new legal framework should be
    - Comprehensive – Applicable and to be included by all the departments, ministries, local bodies etc.
    - Prioritized – All infrastructure developing authorities should prioritized inclusion of these provisions. It should be mandated in new laws itself.
    - Synchronized – Inclusion of clear provisions and its compulsory inclusion by infrastructure authorities will help in synchronizing the activities of each department, as well as of different layers of governance, in a holistic manner by ensuring coordination of work between them.
- All infrastructure sectors such as road construction authorities/agencies like NHAI/SH/PP Projects must include, in their construction design policy, a provision for a utility duct to enable laying of OFC for all new infrastructure and also adopt similar measures in existing projects in a "Dig Only Once" policy approach.

FRAMEWORK FOR MERGERS, ACQUISITIONS etc.

21. With a view to simplifying the framework for mergers, demergers and acquisitions, or other forms of restructuring, a new law needs to allow for any licensee or registered entity to comply with the scheme for restructuring as provided under the Companies Act, 2013, and simply inform the Department of Telecommunications, as required. This process needs to be simplified.

DIPA's Comments:

Mergers and Acquisitions (M&A) are natural in any sector. M&A results in many benefits such as improving economies of scale, enhancing efficiency, attracting investments, promoting efficient utilization of resources and increasing affordability of services. However, increased market share as a result of M&A may lead to monopoly power and thereby lessening of effective competition and higher prices for consumers. Generally, in any sector, the level of competition is linked with the number of players i.e. the more the merrier. However, telecom is a capital incentive sector and provision of mobile services involves the utilization of limited natural resource, viz. spectrum, whose efficiency reduces with the increasing number of players as it leads to fragmentation, necessitating increased provisioning of guard bands. Therefore, there is a need to have a merger and acquisition policy framework that facilitates M&A activities and at the same time ensures that no compromise in competition occurs in the sector.

To ease M&A process only following factors need to be considered

- Technological change and dynamic efficiencies that would result from the merger;
- Cost savings and other efficiencies claimed by the merging firms;
- The ease of market entry, or existence of any barriers to entry;
- The potential for collusion among firms in the market following the merger;
- The possibility that the merged entity may act anti-competitively;
- Whether one or both of the merging firms are likely to survive or fail if the merger does not proceed;
- Whether the merger would eliminate any potential competitors;
- Whether customers in the market have –countervailing power‖ that would constrain the merged entity

- It will not be appropriate that merger/de-merger should be as per Company Act, 2013.
- Companies should simply inform the DoT
- It should be sufficient and appropriate that DoT should take opinion from SEBI and CCI.
- Expeditious – There should be no separate process by DoT after NCLT approval has come through

PROVISIONS PERTAINING TO INSOLVENCY

22. A new law needs to address insolvency related issues in telecom sector with a focus on continuity of service. There is a need to ensure that insolvency proceedings should not lead to suspension or termination of the license/authorization/assignment as long as: (a) telecommunication services continue to be provided and (b) there is no default in payment of dues in relation to the telecom license or use of spectrum. This crucial balance between continuity of service and safeguarding public interests needs to be addressed under a new framework.

DIPA's Comments:

Yes, DIPA agrees that the new law should ensure that insolvency proceedings should not lead to suspension or termination of the license/authorization/assignment because of the following reasons:

- To ensure that mere initiation of proceedings does not hinder the business and continuity.
- Telecom services are critical services and therefore mere procedures should not impact them as it can be initiated by ulterior motives too.
- Insolvency proceedings should not be allowed to be misused by unscrupulous elements for disrupting the services and continuity of business.
- Large number of insolvency proceedings are withdrawn as well. Therefore, it makes it even more imperative that just initiation of proceedings should not suspend or terminate the license etc and does not hinder smooth continuity of business and service.

23. Unlike many other natural resources, spectrum is completely reusable. It has no physical form. It comes into existence only when it is used. It has no value if it is not used. Therefore, considering the uniqueness of spectrum as a natural resource, the new law needs to provide for situations where spectrum is not being put to use due to insolvency.

DIPA's Comments: No Comments

EXPANDING THE SCOPE OF THE USOF

24. The new framework also needs to consider ways in which to overhaul the current Universal Service Obligation Fund with the wider concept of a "Telecommunication Development Fund". This can address the larger public purpose of ensuring delivery of universal telecommunication service to underserved rural and urban areas, research and development of new technologies, and promote employment and training activities. This can enable the growth of indigenous companies in the technology space.

DIPA's Comments:

Since the telecommunication services have reached every part of the country, there does not seem to be any need for carrying on the USOF any longer. Accordingly, the charge needs to be dispensed with, which will enable the operators to invest more in rolling out the networks.

Now efforts should be to utilize the large amounts already lying unspent in USOF on following lines.

Recalibrating universal service obligation fund (USOF) can help deployment of infrastructure in unserved areas. Many funds globally have been unsuccessful, suffering from challenges such as poor design, mismatches in funds collected and disbursed, political interference, lack of training and education, and maintenance and energy supply.

Universal service funds might be better utilized if focused on high-risk populations and to reduce gaps among vulnerable groups including women and girls, persons with disabilities and older persons, regardless of where they live. This is particularly relevant given that the coverage gap is much smaller than the usage gap. This excess fund can be used in relevant urban areas, for training purposes, etc

The fund should be given to utilize not only based on geography but on basis of entity who is providing the necessary services and infrastructure.

PENALTIES

25. Penalties should be proportionate to offences. With this in view, a new law needs to consolidate and update the various provisions on penalties and offences.

DIPA's Comments:

Yes, penalties should always be proportional to offences committed.

- New law should ensure that the enabling law/legislation provides with a wide range of penalties to include those appropriate for minor, mid-range, and maximum offences.
- When establishing penalties, seek to minimize the cost of compliance with regulations for business users and consumers.
- Consolidation is necessary to prevent multiple levy of penalties on the same offence.
- It is also generally desirable for the structure of enforcement to encourage self-reporting. Self-reporting can be induced by lowering the sanction for violators who disclose their own infractions. Self-reporting lowers enforcement costs, reduces the risk of harm, and may allow harm to be mitigated.
- Establish and employ fines/sanctions that are reasonable (proportional to the offence) and effective, but high enough to deter wrongdoing and achieve compliance with rules.
- Considering the cost of enforcement, seek effective alternatives to fines (for example, employ voluntary industry compliance schemes, or include specific requirements in licence obligations).

STANDARDS, PUBLIC SAFETY AND NATIONAL SECURITY

26. A new law needs to have appropriate provisions for addressing situations of public emergency, public safety and for taking measures in the interests of national security.

AND

27. Such a law needs to provide enabling framework for the Central Government to prescribe relevant standards for telecommunication equipment, telecommunication services, telecommunication network, telecommunication infrastructure. The aim is to ensure public safety. This is all the more crucial given the widespread use of telecommunications, whether for education, or entertainment, or tele-medicine, or facilitating e-mandis.

DIPA's Comments:

- The new law should address the given situations but on the same time should have clear provisions so that these situations are not misused for disrupting the business operations on frivolous complaints.
- These need to be precise and clear and should not leave any ambiguity in understanding and interpretation. No umbrella provisions should be there. Specific conditions inviting the provisions of law should be clearly stated.
- New law should once for all clear the health hazard issue related to EMF and no coercive action should be allowed which is not in concurrence with the framed law.
- No private complaints should be allowed without duly supported by new law and regulations and without prior approval by DoT.
- National security is of prime importance and must be ensured. Thought may be given to reducing overlapping requirements – that lead to duplication of efforts and costs – security processes may be streamlined
- Vandalism of telecom infrastructure should be a non-bailable offence.

ISPAI Inputs to DoT Consultation Paper on 'Need for a new legal framework governing Telecommunication in India'

Telecom industry has put in substantial investments and all future generations of technologies and spectrum require continuous investment. Therefore, a holistic legal framework that reflects the changing digital landscape while reducing costs and barriers to network creation, deployment and expansion will deliver the best outcome for both the economy and society at large.

DoT Consultation rightly notes many leading Telecommunications markets like the UK, Australia and the US have all continuously evolved and reformed their Telecom Acts in last 2-3 decades. We accordingly suggest the following building blocks while drafting the proposed Telecom Law.

- The proposed law should recognize the 'public good' element particularly in spectrum. The available spectrum should be able to serves the future demand for connectivity at an affordable rate
- Support financial sustainability of the industry to build and invest in network infrastructure
- Regulatory impact assessment (RIA) before and for every regulatory intervention should be included
- Law should be future proof, bring regulatory certainty and be applied prospectively
- New legal framework should be balanced and equally applicable to all the stakeholders of the entire digital services value chain for ensuring level playing field.
- New Legal framework should ensure transparent and stable spectrum management enabling larger participation for proliferation of broadband services
- Align with global best practices and the best global regulatory regimes
    - Promote use of industry 'self-regulation'
    - No undue financial and administrative burdens on industry - prescribe that a regulatory levy/fee must recover only the cost of administering resource / asset;
    - The USO Levy should be phased out
    - Comprehensively review penalty regime
    - Implement RoW in letter and spirit
    - Cost of lawful interception & security requirements should be shared between the TSPs and LEA/User departments
- Take note of and address convergence in technologies
- Present licensing and regulatory framework are more suited to B2C telecom businesses. Need Policy reforms for Enterprise Service Providers as well enabling them to deliver services more efficiently and effectively to their customers
- Temporary shutdowns – refine the SoP with central government as single authority
- Possession of illegal SIM boxes/repeaters/jammers be non bailable cognizable offence
- M&A– simplify, streamline and work in tandem with NCLT proceedings

- **Spectrum has 'Public Good' element in it**

Telecom networks resiliently absorbed the shock from the Covid-19 pandemic, underscoring importance of spectrum as a national resource for the *'Public Good'*, also endorsed by the Hon'ble Telecom Minister[1]. The cost of spectrum impacts the total cost of telecommunications services and the sustainability of the telecommunications industry itself. It is essential that spectrum allocation and pricing has as its bedrock the element of 'Public Good'. Further, as new spectrum users emerge, we need to have a clear decadal roadmap for spectrum assignment and allocations, with clearly defined terms and conditions (T&Cs).

- **Be future proof, ensure level playing field, certainty and apply the law prospectively:**

Telecom sector is currently heavily regulated with onerous obligations of telecom licenses in the form of network security, confidentiality of data, reporting requirements, etc. with heavy pecuniary damages and sanctions for non-compliances. For instance, in comparison the rest of the players in the digital marketplace enjoy a regulatory oversight. Privacy & Security of data though has a large-scale impact across all the digital players in terms of their obligations towards their users and customers. In our view the obligations with respect to privacy and security of user data across the entire eco-system should be kept the same. This would be a key to modernizing regulations. Thus, it is important that the new legal framework should be balanced and equally applicable to all the stakeholders of the entire digital services value chain incl. OTT Players for ensuring level playing field.

Further, as technology obsolescence increases with shortening lifespan of technologies, law should be future proof to meet future requirements of rapidly changing technologies and industry dynamics including investments. Presently, all Licensed Service providers have made considerable investments based on present law, any change to a new framework should have a transition phase and existing businesses of TSPs should not be adversely impacted. Hence, the new law should be applied prospectively only.

- **Wider consultation amongst stakeholders on co-creation of digital infrastructure**

Fruits of broadband connectivity have been reaped equally, by providers of streaming, social media companies as well, who are also the biggest drivers of traffic on network today. There is need to deliberate on an appropriate mechanism among TSPs, OTTs, Big Technology companies about contribution towards creation of digital infrastructure. There is a growing debate globally about fair and equitable contributions from all such stakeholders who contribute towards creating traffic and thus impact network investments and capacities.

- **Regulatory Impact Assessment (RIA)**

India should adopt best practices around regulatory impact assessment or RIA as followed by world's leading regulators e.g. OFCOM in UK. All policy, and regulatory decisions and interventions should be based on RIA and the RIA must be made part under the new law.

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[1] https://www.zeebiz.com/india/news-public-good-element-in-spectrum-pricing-now-widely-recognised-telecom-minister-ashwini-vaishnaw-173290

- **Need Policy reforms for Enterprise Service Providers as well enabling them to deliver services more efficiently and effectively to their customers**

Today enterprises are going through profound upheavals as digital technology rapidly and radically transforms how business engages with the marketplace and stakeholders. Digital Transformation has become essential for growth of any Enterprise and is a key in responding the disruption of work and business ecosystem-especially post pandemic era in the 'new normal'. Since Present licensing and regulatory framework are more suited to B2C telecom businesses and the telecom reforms brought by Government recently to support Telecom Sector largely for Access Service providers. Therefore, there is a need of policy reforms for Enterprise Service Providers as well for enabling them to deliver services more efficiently and effectively to their customers.

- **Transparent and stable spectrum management enabling larger participation for proliferation of broadband services**

The proposed structural and exponential change in the present legal framework should bring not only regulatory stability and transparency but also attract new investments significantly. Spectrum Management is an important policy enabler for Digital India. There is a need to have necessary provisions in place to allow other licensed service providers such as ISPs to participate and bid in future spectrum auctions to promote competition in the market by having more players owning licensed spectrum and competing in the market leading to more broadband proliferation. Any class of licensees should be permitted to buy spectrum, either through auction or through allocation, to satisfy the needs of the services they offer to their customers. Since license and spectrum holding are delinked, anyone buying the spectrum pays for it irrespective of their type of license holding.

Spectrum leasing should also be permitted other than spectrum trading and sharing. 5G spectrum should be allowed to be leased out to other licensed Service Providers by the winners of the spectrum auction which would ensure optimal utilization of the Spectrum, sharing upfront capex cost of the spectrum by number of Service Providers bidding as a Consortia and other such innovative measures leading to higher broadband proliferation. Further, there is an immediate requirement for opening of the 6 GHz spectrum band as delicensed band for Wi-Fi services in line with global practices. To promote Industry 4.0 initiative, there should not be any rollout obligation associated with mid band and mmWave band and should be left to the service provider choice to deploy the spectrum as per the demand of Enterprise specific use cases / applications.

Spectrum should also continue to be assigned administratively to other licensed service providers like ISPs, Satellite Service Providers etc. to use the same for purpose of last mile access connectivity.

- **Recover only the cost of administering a resource, and abolish the USO levy:**

India's regulatory levies remain one of the highest globally. Many advanced regulatory regimes recover only the cost of administering a resource e.g. OFCOM in UK (UK Telecom Act 2003), and FCC in the USA, and Australia. Thus India's new law too should align to such global best practices.

Further, time has come to end the USO levy since private sector has been instrumental in achieving the objectives of rural connectivity over the years by constantly rolling out telecom networks in rural and unconnected areas. Today rural tele-density has surpassed the objectives laid down under successive telecom policies. Despite this, while USO collection has increased, the disbursement has remained low, leading to substantial unutilized accumulated surplus in the Fund. However, if it is decided to continue with the USO levy, then the new Act should expand the contributing entities.

Adequate provision should also be made to allocate funds from Universal Services Obligation Fund (USOF) for incentivizing Licensed Service Providers who are promoting connectivity to rural and remote areas especially with alternative and innovative technologies especially two million hotspots in rural area as envisaged in NDCP-2018.

Therefore, the new law should either abolish or freeze the levy for the next few years until the current available funds are exhausted effectively. It can then be restarted with a significantly lower rate and with increased number of contributing entities.

- **A comprehensive review of penalty provisions must be conducted**

In the absence explicit guidelines, a maximum penalty amount (Rs. 50Cr) is often imposed even for the minor of deviations and there is a need to review the same in view of the nature of severity of the incident and same should be brought down to maximum penalty of Rs.1 Crore. The new law should enable penalty provisions based on severity of non-compliance and its overall impact on the national security and a suitable penalty matrix should be devised linking the penalty to the severity of the incident and recurrence of the violation for imposition of financial penalties in consultation with the Industry. The new law should also bring concept of discount and settlement procedure in penalty cases, as followed by some other jurisdictions to settle such cases.

The new law should also ensure that the amount of penalty imposed on any license for the violation of the license clause should commensurate the loss to the Government/Exchequer in accordance with the Contract Law.

We strongly recommend that all Criminal Offences under the Telecom Act be converted to Economic Offences.

The present scheme of penalties has led to litigations in the past. We believe that once the **Principles and Methodology** for Penalty Notice is published in public domain post due consultation with the industry, it has the potential of reducing future litigations in the sector and achieve higher levels of compliance. We have the following recommendations to include in the policy.

- **Appellate mechanism:** There should be a central authority for Appeal against the show cause notice, it should be located at DoT HQ for uniform policy administration across licensed service areas.
- **Withdrawal of Notice:** The Authority should have powers to review the response of the Licensee and withdraw the show cause notice in case the violation/ error has been rectified within specified time mentioned in the show cause notice.
- **Compounding powers:** Once the Authority is satisfied with the corrective action taken by the Licensee, it may withdraw the notice or may impose a nominal graded penalty commensurate with the nature of violation.

- **RoW must be implemented in letter and in spirit**

While the government has sought to address complex and expensive RoW approvals via RoW Rules 2016 and amendments thereof, and bringing under the PM Gati Shakti plan through the Sugam Sanchar portal, on ground challenges still remains specially on charges. The DoT Consultation has stated that:

"13. To enable investments, new law should also provide framework for various players in telecom value chain like service providers, infrastructure providers, RoW providers etc..."[2]

Therefore, the new Act should give legal backing across states to Telecom RoW permissions for laying fiber and installation of telecom towers etc. RoW charges must be consistent and commensurate only with the restoration charges to ensure the viability and affordability of services. Since fiber connectivity needs to proliferate with greater speeds, it is also important that the decision to lay fiber is given in a time-bound manner.

Through the new law, there is also a need to ensure that every new construction (private/public buildings) should mandatorily have provisions for provision of necessary digital telecom infrastructure. A single window clearance is must for processing of all RoW permission applications by leveraging digital means to bring transparency and predictability with minimum TAT -30 days.

- **Take into account convergence in technologies and platforms**

Due to the convergence in broadcasting, telecom and IT services, it is possible to distribute Satellite TV channels on Telecom networks or through internet platforms like OTTs. However, in case of online communications platforms there is a lack of clarity in the existing licensing conditions. The new law should duly take note of such convergences and include provisions to ensure consumer interest, and ensure level playing field amongst various DPOs.

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[2] Para 13, DoT's extant Consultation Paper

Furthermore, since DTH license involves a carriage of Satellite TV channels, and is issued under Section 4 of the Indian Telegraph Act, to enable synergies between both, the DTH should be brought under the Telecom ministry - consistent with the fact that regulator (TRAI) and adjudicating body (TDSAT) are also common for DTH and Telecom Sector.

- **LEA and Security requests: cost sharing between TSPs and LEAs/ user departments**

TSPs have been at the forefront of ensuring that they comply with the requirements laid down by the law enforcement agencies, and any new additional requirements put up by such agencies.

However, such demands from LEAs are increasing, putting substantial cost and investment burden on the TSPs. Therefore, the new Act should put in place a cost-sharing mechanism between TSPs and LEA/user government departments. Such an approach is followed in other jurisdictions as well e.g. Australia[3], United Kingdom.

Temporary stopping / shutdown orders in an area/district/state must be only through an SOP approved by DoT, and Telegraph being a Union subject, only the Central government should be the governing authority in this regard. The current ad-hoc requests and orders to stop internet services in an area e.g. during states' examinations causes significant inconvenience to local public at large.

- **Illegal possession and use of telegraph should be non bailable and cognizable offence**

To mitigate issues related to interference, the new Act should declare the use of illegal SIM boxes / repeaters / jammers as a non-bailable and cognisable offence.

Any damage / vandalism of telegraph apparatus or site or any physical telegraph apparatus should be classified as a non-bailable and cognisable offence. Further, a provision should be proposed in the Act that any/all authorities and agencies (e.g., civil, utility) whose work may have a bearing on a Telegraph asset (e.g., Fiber/ Tower) must mandatorily give an advance notice of 30 days before commencing the work on the route so that TSPs / IP1s can make appropriate arrangements of any damage, cuts, etc. In the absence of such timely and appropriate notice, the agency/authority/entity must compensate for the damage and loss caused to the TSP and/or IP1.

- **M&As: Simplify and align approval process with NCLT proceedings:**

While DoT is a part of the NCLT process and actively participates in the whole process, the applicant/petitioner companies are still required to approach DoT for approval of the demerger/merger of licences or telecom business on record. The NCLT proceedings itself take at least 8-12 months and the approval from DoT thereafter also take 2-4 months, leading to a total time frame of 10-16 months for the demerger/merger to be completed. This results in significant loss of time and value to the merging entities. Since DoT is already a part of the NCLT merger proceedings, the merging entities should not be required to approach DoT separately for its approval and the approval of DoT should be a part of the NCLT merger/demerger process.

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[3] See, Telecommunications (Interception and Access) Act 1979

- Simplification of the Regulatory Framework

    - Anomaly across similar licenses – The definition of pass-through charges permissible under similarly placed licenses are different viz. the definition under UL(VNO) NLD license allows all charges including bandwidth charges paid by VNO to NSO is permitted as pass-through, however similar provision in UL NLD license is not available. Some of the licensees have already represented to the Department in this regard.

    - Centralized Monitoring System – All ILD and ISP licensees are mandated to connect their systems to the CMS facility, the law enforcement agencies are provided facility for on-line and real-time monitoring of traffic. This facility makes the obligation of providing physical space (10 work stations with access control) a redundant real estate facility at the Licensee gateway locations. In the recent years since the CMS system has been put in place the utilization of these 10 workstations/ desks has been negligible. We recommend that this condition may be removed from the license.

    - Centralized IP filtering: The present CMS system deployed by the Government has the facility to monitor IP traffic and blocking of URL, IP addresses can be done by the LEAs. We recommend that the obligation on ILD and ISP licensees for the same may be removed and the policy may be administered centrally by LEAs for uniformity and ensuring Clean IP to the nation.

    - Universal Service Obligation: The present license has a provision under which all licensees contribute 5% of their adjusted revenue to the Government. In view of the large corpus available under this head, we recommend that there should be moratorium of 5 years on the USOF levy. Alternatively, the USOF levy may be reduced from present 5% to 1%.

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IAMAI
INTERNET AND MOBILE ASSOCIATION OF INDIA

IAMAI Submission on 'Need for a new legal framework for governing the telecommunication sector in India'

The Internet and Mobile Association of India ("IAMAI") is a not-for-profit industry body and we play a key role in ensuring the growth and sustainability of the digital industry. We firmly believe that the digital industry is going to be a major driving force in the economic and social development of the country which includes job creation, innovation, contribution to the GDP, inclusion and empowerment of our citizens, etc.

On July 23, 2022, the Department of Telecommunications (DoT), Ministry of Communication published consultation paper on **'Need for a new legal framework for governing the telecommunication sector in India'**. At the outset, IAMAI would like to thank the DoT for the opportunity to submit our comments on the consultation paper. Our suggestions are listed below.

IAMAI Submission:

- **Scope of Consultation:** While the Paper identifies certain areas on which the Department of Telecommunications is seeking inputs (such as expanding the scope of USOF, Right of Way, spectrum management, etc.), DoT and the Telecom Regulatory Authority of India (TRAI) have different functions, and issue rules and regulations ranging on various topics. These include but are not limited to those in relation to the licensing framework, use of telegraphs, quality of service, unsolicited commercial communications, interconnection, tariff review and quality of service, to name a few. While the Paper proposes a "new" law for the telecom sector, it does not clarify what all will be covered under such law or why a new law is required as almost all objectives can be met by modifying rules that can be notified under the Indian Telegraph Act. Therefore, we suggest DoT set up an expert committee to develop a white paper for consultation and stakeholder consultation. Moreover, for an effective consultation process, a detailed review of the approach adopted by other jurisdictions to regulate this sector in light of technological developments is required. We suggest that a draft whitepaper on the updated legal framework for the telecom sector be developed by the suggested expert committee (as suggested above) and be put out for public consultation. Subsequent to this, we also suggest that the same process be followed up by putting out 'draft bill' for public consultation.

- **Competition Friendly:** The proposed changes must ensure that the framework is competition friendly. A competitive telecom sector is key for the growth of a vibrant technology industry in India, which relies on the communications infrastructure. Therefore, it is important that any policy and licensing framework should be framed with an objective of creating a competitive telecom sector with non-discrimination, technological neutrality, and transparency as its core objectives.

- **Long-term Regulatory Certainty:** The proposed Act should ensure long-term regulatory certainty for orderly growth of sectors; it must have proper checks and balances. It should foster efficiency, transparency, inclusiveness, regulatory certainty and eliminate the concept of discretionary powers. The new law should also not dilute any obligation of any single entity.

- **Future Proof Law:** As technology obsolescence increases with shortening lifespan of technologies, law should be future proof to meet requirements of rapidly changing technologies and industry dynamics including investments. Thus, the new law should be able to meet the requirements and address evolving technological developments. Moreover, TSPs have made considerable investments based on present law, any change to a new framework should not adversely impact the existing businesses of TSPs. Hence, the new law should be applied prospectively only.

- **Resolve Right of Way:** The new legal framework should resolve RoW issues by addressing the overlapping regulatory ambit of various central/state authorities and ensuring non-discriminatory access is provided to all the telecom players. Further, the new Act should give legal backing across states to Telecom RoW permissions for laying fiber installation of telecom towers, small cells etc. RoW charges must be consistent and commensurate only with the administrative/restoration charges to ensure the viability and affordability of services. Since fiber connectivity needs to proliferate with greater speeds, it is also important that the decision to lay fiber is given in a time-bound manner. These are required to ensure a smooth and quick rollout of 5G services as well as wired broadband services.

- **Simplify Mergers & Acquisitions and Insolvency:** Aspects such as mergers and acquisitions, insolvency, etc., must be dealt under existing legislations to the extent that sufficient provisions already exist as they have been enacted after years of consultation and have extensive jurisprudence. This will avoid any overlap and regulatory uncertainty for entities and will further increase ease of doing business in this sector, as it would allow for clarity for companies intending to invest in the telecommunication industry. While the DoT is a part of the NCLT process and actively participates in the whole process, the applicant/petitioner companies are still required to approach DoT for approval of the demerger/merger of licences or telecom business on record. This results in significant loss of time and value to the merging entities. Since DoT is already a part of the NCLT merger proceedings, the merging entities should not be required to approach DoT separately for its approval and the approval of DoT should be a part of the NCLT merger/demerger process and therefore all licenses and resources should be transferred without any delay to the new entity without any further application or request to DoT. In case of insolvency, the new law should not enable writing off any pending liability, more particularly any government dues, through a statutory provision.

- **Universal Service Obligation Fund:** The Paper mentions that the DoT is considering overhauling the existing Universal Service Obligation Fund (USOF), and replacing it with a Telecommunication Development Fund (TDF). Before considering such changes, the DoT should clearly identify the purposes for which such funds are utilised. It should also develop mechanisms to ensure that such funds are utilised for their intended purposes, i.e., for telecom connectivity projects in rural and underserved areas. An analysis of USOF disbursals indicates that only around half of the funds in the USOF have been disbursed for enabling connectivity in rural India. In light of this, we recommend, the time has thus come to end the USO levy especially since the private sector continues to be instrumental in achieving the objectives of rural connectivity over the years by constantly rolling out telecom networks in rural and unconnected areas. Therefore, the new law should enshrine the sun-setting of the USO Levy, or put the levy in abeyance for the next few years until the currently available funds are exhausted effectively. It can then be restarted with a significantly lower rate.

  Further, research and development of new technologies, and promotion of employment and training activities are activities unrelated to the objectives of the Fund and may be met by the Government through other means

- **Light Touch Licensing:** In line with the DoT's intention to simplify and liberalise the telecommunications framework, we recommend that the licensing regime be made light touch and future proof, which incentivises innovation and new investments into the telecom sector and is technology neutral. A principal-based approach will simplify compliance and enable the adoption of new-age technologies such as 5G, internet-of-things, etc., touted to transform operations, increase automation and efficiency, and enable implementation of new products or services.

- **Simplified Allocation:** All spectrum bands should be allocated through a transparent process. The process of spectrum allocation must also be simplified and expedited to promote 'ease of doing business' in India.

- **Temporary Internet Shutdowns:** Temporary stopping / shutdown orders in an area/district/state must be only through an SOP approved by DoT, and Telegraph being a Union subject, only the Central government should be the governing authority in this regard. The current ad-hoc requests and orders to stop internet services in an area causes significant inconvenience to local public at large.

- **Proportionate Penalties:** The new law should enable penalty provisions that should commensurate with the violation and be proportionate.

- **Adoption of Regulatory Impact Assessments:** India should adopt best practices around regulatory impact assessment or RIA as followed by world's leading regulators such as OFCOM in the UK. All policy, and regulatory decisions and interventions should be based on RIA and the RIA must be made part under the new law.

- **Harmonisation with Other Acts and Sectoral Requirements:** The proposed modified/amended provisions of the Act should preferably be in sync with the various other Acts, i.e., the proposed Digital India Act and proposed Data Privacy & Protection Bill/Act and other sectoral laws. The existing service rules should be amended along with the proposed modified/amended provisions of the Act. However, any such provision should not be in anyway made restrictive for TSPs/Licensees to provide innovative services and experiences to its subscribers/users as technological changes and landscape. Hence, all players should have full flexibility and freedom to make use of data in a safe, secure manner, and they should not be put at any disadvantage compared to any other segment/players in the wider digital ecosystem who many be able to make use of the same data and offer innovative services.

- **Streamline Regulatory Framework:** Essential infrastructure is a pivotal element of a country's resilience, security, and stability. To ensure global relevance and competitiveness, security and stability need to go hand in hand with the Ease of Doing Business. Frequent changes have a detrimental impact on the business climate and project India in an unfavourable light as far as global trade and the international business community is concerned. Multiple and overlapping tests and supply chain assessments for similar products has a direct bearing on compliance costs, timelines (ease of doing business issue) as well as products offered in India (limited customer choice). Against this backdrop, the new framework must introduce a single window of clearances, which streamlines the processes of getting approvals and certifications, which become the standard for establishing trust across agencies and existing license conditions and circulars issued by the DoT regulate conditions on public safety, national security, standards for telecommunication equipment. An approach embracing global best practices is best suited for the rapid development and deployment of new technologies in the sector.

- **Other Measures to foster Ease of Doing Business:** The upcoming legal framework should have enough measures to ensure flexibility to learn and implement from the good practices from other regulatory regimes as well as business friendly measures initiated and implemented by other government ministries/agencies.

- **Cost-sharing Mechanism between TSPs and LEA/user government departments:** The new Act should put in place a cost-sharing mechanism between TSPs and LEA/user government departments for various security arrangements put on TSPs. Such an approach is followed in other jurisdictions as well e.g., Australia, United Kingdom. Costs of security above a certain threshold level may be borne by the Government – in case any outcomes are sought to be expedited.

BIF
BROADBAND INDIA FORUM
"Think Tank for Digital Transformation"

BIF Response to Consultation Paper released by DoT on 23-07-2022 regarding "Need for a new legal framework governing Telecommunication in India"

At the outset, Broadband India Forum (BIF) appreciates the opportunity to provide comments to this Consultation Paper from DoT on 'Need for new legal framework governing Telecommunications in India'.

In this regard, we wish to make the following submissions which is divided into two parts viz.

Part I: The Indian Telegraph Act 1885
Part II: Policy and Rules, basis the Act

PART I: The Indian Telegraph Act, 1885

PREAMBLE

Digital Communications Sector is governed mainly by the following Acts:

- (a) The *Indian Telegraph Act, 1885*.
- (b) The *Indian Wireless Telegraphy Act, 1933*.

1. We wish to point out that the Indian Telegraph Act 1885, which is more than 137 years old, has withstood the test of time and thanks to its versatility and broad-based approach, it has enabled an orderly growth of the telecom sector in the country. We believe very few countries in the world possibly have a similar versatile Act. The definition of 'Telegraph' in this act is very broad and encompasses all means of telecommunication, even the futuristic Free Space Optics for communications. Section 4 of the Act provides the Central Government the exclusive privilege of establishing, maintaining and working telegraphs and power to grant licenses. of telegraphs within any part of India. In fact, it has helped facilitate the following achievements in the sector:
   - a) The second largest mobile telephony network, the second largest Broadband network and the most envied telecom regimes in the world.
   - b) Leadership in terms of the fastest growing telecom network in the world.
   - c) Largest consumers of per capita data in the world.
   - d) Cheapest data tariffs in the world, until very recently.
   - e) Investments worth several trillions of dollars in the sector since inception and continues to be the highest FDI generating sector in the country.
   - f) Highly competitive market which is characterised by the fact that we have over 1000 Internet Service Providers and a multitude of over 50,000 startups – all of which are thriving in the vibrant digital communications landscape that exists today.
   - g) 3 National Telecom Policies and one National Digital Communications Policy (NDCP) – all of which have helped steer the sector to the path of liberalization, competition and rapid digital connectivity.
   - h) Telecom Reforms which eased the way of doing business and breathed a 'new life' into the sector.
   - i) A number of hugely successful spectrum auctions, which have paved the way for sale of spectrum in multiple bands, worth trillions of dollars.

j) Helped facilitate various types and various categories of licenses. Each of these licenses (which are non-exclusive by nature) have unique characteristics.

BIF SUGGESTIONS/RECOMMENDATIONS

2. a) The Act has not been a bar or a hurdle in any of the reforms in the sector thus far and has successfully coped with the evolution and adoption of so many generations of technologies, from 1G to now 5G. Therefore, we are of the opinion that the Act, per se, **need not be changed.**

   b) *An independent legal opinion from a reputed law firm M/s TMT Law is attached in this regard.*

3. The Indian Telegraph Act 1885, currently defines 'Telegraph' as the following:
   '["telegraph" means any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, visual or other electro-magnetic emissions, Radio waves or Hertzian waves, galvanic, electric or magnetic means.
   Explanation. "Radio waves" or "Hertzian waves" means electro-magnetic waves of frequencies lower than 3,000 giga-cycles per second propagated in space without artificial guide;]

   (a) With the advent of technology, there is a substantial increase in smart connected products – from customer premise equipment to consumer electronics to automobiles. Given the IoT products' capabilities to transmit and receive data in any form, there is an increasing need to define the scope of telecom products. This is critical from the perspective of multiple telecom regulations that hardware companies are required to undertake, product testing.

   (b) To enable the Act to reflect the futuristic and state-of-the-art digital technologies viz. Web 3.0, Metaverse, Quantum Communications, etc., **it is suggested that it be renamed as 'Digital Communications Act'.**

4. The objectives of the Consultation Paper can be achieved by amending the rules or the licensing framework i.e. the Unified License Framework under the Act.

   4.1: Some of the issues that are often said to be the basis of the need for a change can be addressed without changing the act as explained below:

   a) Simplification of the Regulatory framework - does not need a change of law. This is an administrative and executive process, and can be amended in any case. The law/act needs no change.
   b) Spectrum Management - again, this is an executive action and is not covered by any existing law. The auction/allocation/administration of spectrum from the very beginning has been a subset of the law. The law/act needs no change.
   c) Right of Way - this is a state subject, and must remain as such. No central law should intrude on state rights. The current directive is a positive move by the centre to ensure the realisation of the issue. The law/act needs no change.
   d) Frameworks for Mergers and Acquisitions - this has been abundantly covered in the licence terms and conditions of each TSP. The law/act needs no change
   e) Expanding the scope of USOF - is an executive decision. The law needs no change.

f) Penalties - are also covered in the Licence Terms of the TSPs. The law/act needs no change.
g) Standards, Public Safety and National Security - all administrative matters adequately covered by the present legal construct. Any change if needed, can be done at the directive level. The law/act needs no change.

5. The Act sufficiently empowers the DoT to make and notify new Rules for telegraphs or wireless telegraphy apparatus, and this power should be used to achieve the stated objectives under the consultation paper, instead of overhauling the entire existing framework and introducing a new law/Act. The Act provides sufficient scope for formulation of new Rules for various new types of services.

PART II: POLICY /RULES WHICH HINGE ON THE ACT

I. SPECTRUM MANAGEMENT

1. Spectrum is a finite and scarce natural resource. Hence, it needs to be employed judiciously for achieving Socio-economic advantages for the country. At the same time, the regulatory framework for spectrum management must prescribe conditions for interoperability and encourage innovation. In view of the same, we suggest the following provisions in the Rules which are required to be written basis the new requirements and which follow from the proposed Act.
    (a) Recognise that Spectrum has 'Public Good' element in it, underscoring importance of spectrum as a national resource for the 'Public Good'. The cost of spectrum impacts the total cost of telecommunications services and the sustainability of the telecommunications industry itself. It is essential that spectrum allocation and pricing has the element of 'Public Good' as its bedrock.
    (b) The Central Government may, grant any spectrum rights, licenses, authorizations, permits to any person or class of persons, or to all citizens by individual licenses or class licenses unconditionally or subject to such conditions, as the Central Government may impose and specify in the grant of the spectrum right, including conditions on the sharing, leasing and trading of radio frequency spectrum.
    (c) Provided that the Central Government may exempt any frequency or frequency band(s) from Licensing requirements unconditionally or subject to such conditions as the Central Government may impose.
    (d) Additionally, the Central Government can identify certain bands or spectrum and delicense it for non-commercial use outside of the Unified License framework, to allow for innovation in the area of cutting technologies. In furtherance of this, certain non-telecom spectrum or frequency must be liberalised and be permitted to be used as de-licensed spectrum to ensure innovation, subject to baseline conditions like non-interference. Upper band of spectrum can also be earmarked for this, and if DoT deems it necessary to protect a portion of the upper band, it should do so on lightly licensed but not exclusive terms. This can be done through the National Frequency Allocation Plan and consolidating the present framework governing spectrum. Liberalization of spectrum is also in line with the National Digital Communications Policy - 2018 (NDCP) which aims to harness the power of emerging digital technologies, including 5G, AI, IoT, Cloud and Big Data to enable provision of future ready products and services, and recognizes the need for identifying and making available new spectrum bands for access and backhaul segments for timely deployment and growth of 5G networks. Further, given the significant advantages of the E and V bands for mobile broadband backhaul, spectrum in the E and V bands should also be attempted to be de-licensed for use in private network deployment.
    (e) As new spectrum users emerge, we need to have a clear decadal roadmap for spectrum assignment and allocations, with clearly defined terms and conditions (T&Cs).
    (f) Power to grant spectrum right is with the Government and it can grant spectrum either through auctions or administratively. It is seen that Court Orders, etc. are

given as reasons for delay in allocation of much needed spectrum by the industry. Auction is one of the mechanisms of allocating the spectrum but not the only one. *Reference may be drawn to Presidential Reference to Hon'ble SC in the 2G matter wherein the Hon'ble SC stated "Auction as an economic choice of disposal of natural resources is not a constitutional mandate. The Hon'ble Court said that it is the prerogative of the Government to decide the method of alienation of public resources, provided the method is transparent, fair and backed by social or welfare purpose".* Considering that the sector is opening up and spectrum will be required by various industry players, whether the Spectrum is to be granted through a public auction or administratively, should clearly be laid down suitably in the modified provisions of the Indian Telegraph Act. The provisions should specify what is the kind of spectrum, for what service/application it is to be used, whether it needs to be licensed or unlicensed, whether it is for terrestrial or satellite use, etc. However, for long term point of view, it is important that the issue is addressed through legislative changes.

(g) To ensure non-cartelization/colonization of RF spectrum, Quantum of spectrum allocated to the Licensees should be done in an equitable manner. Optimal and efficient spectrum utilization should be of paramount importance while assigning/allocating spectrum.

(h) A vibrant ecosystem of innovation is dependent primarily on the regulatory framework, and therefore a balanced approach between more traditional methods of spectrum allocation (i.e., exclusive licensing) and newer types of spectrum allocation (e.g., licence-exempt, spectrum sharing, and dynamic allocation) must be adopted.

(i) End-users and consumers rely on ubiquitous, high capacity connectivity, including over Wi-Fi networks, to enjoy and make use of online services. Manufacturers of (smart) devices have interest in developing interoperable radio frameworks to ensure that the connected device ecosystem offers a seamless and high-quality end user experience. For enterprise services including edge connectivity solutions that are increasingly essential to a range of industry 4.0 customers in telecommunications, retail, manufacturing and hospitality, we see a need for very high capacity localised/edge networks to support innovative industrial and consumer experiences. Those three principles - ubiquity, interoperability and innovation - summarise what we consider to be the core objectives driving the next phase of spectrum policy.

(j) We would again like to re-iterate that the current framework enables spectrum trading, sharing, leasing and surrender of spectrum. Even leasing can be enabled by way of an amendment to the policy and does not require changes to the Act itself.

(k) We recommend that when defining its mobile strategy, DoT could perhaps take into account the important role of licence-exempt technologies, specifically technologies like Wi-Fi, Satellite Communications, which are playing a key role in providing connectivity for mobile devices. When assessing the future demand for mobile spectrum the needs of consumers and businesses for local connectivity must be carefully considered. While making a sufficient amount of spectrum available for mobile use (5G/6G) is important, the characteristics and requirements of local connectivity and other emerging use cases based on delicensed spectrum bands need to be considered and recognised in the policy as well. New technological developments and global trends in IoT, Short Range Devices, Wi-Fi, Satcom, etc. also need to be taken into consideration for the advancement of the industry and to ultimately bring technological benefits to its citizens.

(l) For proper inclusion of all players, and optimum utilization of this scarce resource, *i.e.* radio frequency spectrum, a 10-year Spectrum Roadmap which can be periodically updated should be institutionalised as part of the Indian Telegraph Act and a National Spectrum Policy may be formalised. This policy should take into consideration technological advances, global trends and harmonisation. Delay in allocating spectrum for non-carrier related spectrum needs tends to hamper the progress of the emerging digital communications sector and deprives the customers the benefits of innovative technologies and new innovative use cases.

(m) Based on international best practices, DoT may expeditiously look into/evaluate de-licensed spectrum requirements of other sections within the industry (outside of the licensed telcos) and send references on de-licensed spectrum to TRAI based on its own assessment and/or requests from the industry. Given that a lot of coordination between TRAI and DoT is required to undertake public consultations, empowering TRAI to *suo moto* take up spectrum consultations for areas that lie beyond spectrum needed by Service Providers may also be considered.

(n) It is important to have spectrum allocation principles which are well suited for each of the technologies. The global best practices, the way the spectrum is used – dedicated or shared, ability of the specific industry to pay for the same etc., should be considered while deciding on the method of allocation of spectrum to individual technologies. Considering the above, it is important that a holistic view is taken w.r.t spectrum, so that different relevant technologies are allowed to co-exist, prosper, and serve the needs of various Industries/regions of India most optimally.

(o) Spectrum for satellite communication should not be auctioned. Some of the main reasons for not auctioning satellite spectrum are that: (i) it is line of sight technology and same spectrum can be shared across multiple Satellite Communication operators and thereby resulting in very efficient use of spectrum (ii) it is used to provide connectivity for underserved locations (iii) provides connectivity for cellular backhaul thus enabling cellular services at difficult terrains iv) auction of spectrum for satellite communication will make it the satcom industry commercial unviable.

II. It is suggested that "Digital Connectivity" be given the highest priority by the Government (Centre & States) and the Regulator, as 'Digital Connectivity' is vital for socio-economic development, growth of GDP, SDP & the welfare of the consumers. As was proved during the recent pandemic, the world and India is increasingly going the digital way and all the consumer centric services viz. education, healthcare, commerce, work and entertainment are increasingly being delivered and consumed digitally. Telecommunication has been included in the *"Essential Services Maintenance Act,1981"*; also as being a strategic asset, Telecommunication has been identified as a National Critical Information Infrastructure. All the sectors/ engines of growth of our economy heavily rely on the digital connectivity, any disruption of the communication network would be detrimental to the functioning of the nation.

III: Liberalised Licensing

a. We need to first establish the precise meaning of the term 'licence'. Black's Law Dictionary, one of the most longstanding, reputed and trusted sources worldwide for definitions of legal terms - the veritable gold standard for the legal language, defines a license as "a permission, accorded by a competent authority, conferring the right to do some act which without such authorization would be illegal, or would be a trespass or a tort[1]". Generally, this permission is given in writing as an express license. **Under certain circumstances, in place of the express license can be an implied license.** An implied license is an unwritten license which permits a party (the licensee) to do something that would normally require the express permission of another party (the licensor). Implied licenses may arise by operation of law from actions by the licensor which lead the licensee to believe that it has the necessary permission. In 2008, the Ninth US Circuit Court held that a non-exclusive license to use copyrighted material can be granted by implied license[2].

b. **Registration is a License u/s 4 of the Indian Telegraph Act:** As per English Language and Usage Stack Exchange, the words 'licensing' and 'registration' are linked and sometimes used interchangeably, simply because in order for something to be registered, it often has to be licensed, and vice-versa. Registration can be evidence that something is licensed[3].This matter was deliberated at length by TDSAT in Reliance Infratel Ltd. Vs. Etisalat DB Telecom Pvt. Ltd. Mumbai[4]. One of the contentions in the case was that the petitioner therein being a registrant could not render telecommunication service not only because it was specifically debarred from doing so but also in view of the fact that it was not a licensee within the meaning of the provisions of Section 4 of the ITA. **The Tribunal found in regard to a registrant being a licensee that the parting of the exclusive privilege vested in the Central Government through a registration certificate or otherwise, implied licensing.,** any part of the exclusive privilege vested in the Central Government is to be parted with or outsourced in favour of any other entity, the same would mean a license.... "(Para 125 of Order). "...If, whether by way of grant of registration certificate or otherwise.

c. Subsequently, TRAI in its Recommendations on 13th March 2020, has also agreed that Registration is a form of License U/s 4 of the Indian Telegraph Act and that IP1 registration and registration of PDOAs Under PM-WANI are also akin to that of a License from the above, it is clear that registration of an IP1 provider was considered license under Section 4(1).

d. As explained above, nothing legally prevents the Government from parting with its exclusive privilege to provide telecommunications services through simple registration. With advancing technology and the proliferation of applications, Next-

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[1] See thelawdictionary.org

[2] See www.revolvy.com

[3] englishstackexchange.com

[4] Petition No. 75 of 2012, order of the Tribunal dated 10th April, 2012.

Generation and Value-Added services are rapidly emerging that use the networks/services of existing TSPs at higher layers. These Next-Generation Value-Added telecom services are invaluable, not only to end-users, but also to all the stakeholders in the value chain and the economy as a whole. Resorting to a rigid explicit license in such cases, would perhaps only negate most benefits. It will moreover, unnecessarily increase administrative workload and delay service deployment. If we are to realise Digital India expeditiously, Policy must always scrupulously promote Innovation while ensuring Fair Competition.

e. While considering any changes to the existing regime, the DoT must recognise the fundamental difference between entities that do not perform a core telecom function, and those that provide telecom services. In light of this, the licensing framework must be restructured and liberalised to remove unnecessary licensing burden for especially services that are not holding limited national resources (e.g., spectrum or numbering resources). Service providers who do not hold such national resources should not be required to obtain a license and where needed, only a light touch approach must be adopted.

f. Further, the license itself should be made technologically neutral, to ensure that future technologies and innovation are accounted for. Any framework must be competition friendly. A competitive telecom sector is key for the growth of a vibrant technology industry in India, which relies on the communications infrastructure. Therefore, it is important that any policy and licensing framework should be framed with an objective of creating a competitive telecom sector with non-discrimination, technological neutrality, and transparency as its core objectives.

g. In addition, there is a need for clarity on what qualifies as a telecom equipment and be included under the ambit of the telecom legislations. This will also ensure alignment with Internationally accepted norms of what does and does not constitute telecommunications devices and equipment subject to regulation. The globally accepted demarcation point for such consideration is device termination to a public network for either the provisioning or consumption of telecommunication services.

h. Specific examples of what does not constitute a core telecommunication device and therefore should not be subject to regulation include:
    a. Devices that do not directly connect to the public network, and
    b. Do not provide a telecommunication service
    c. Are not used by a telecommunication provider (ISP) to provide telecom services
    d. Are not relied upon by consumers for Internet or telephony connectivity
    e. Equipment that may enhance the connectivity but may not be a core network component e.g., switches, network transmission devices, cables etc.

IV. M&As: Simplify and align approval process with NCLT proceedings:

While DoT is a part of the NCLT process and actively participates in the whole process, the applicant/petitioner companies are still required to approach DoT for approval of the demerger/merger of licences or telecom business on record. The NCLT proceedings itself take at least 8-12 months and the approval from DoT thereafter also take 2-4 months, leading to a total time frame of 10-16 months for the demerger/merger to be completed. This results in significant loss of time and value to the merging entities. Since DoT is already a part of the NCLT merger proceedings, the merging entities should not be required to approach DoT separately for its approval and the approval of DoT should be a part of the NCLT merger/demerger process. Mergers and acquisitions: Simplification of the process required for mergers and acquisitions is welcome, and any changes to the current M&A regime in the telecom sector can be introduced via an amendment to the '*Guidelines for Transfer/Merger of various categories of Telecommunication service Licenses/authorisation*' and does not require any change to the Acts.

V. Right of Way: We agree with the DoT on the importance of Right of Way (RoW) regulations to provide for establishment of telecom infrastructure in a non-discriminatory manner and set out a process for dispute resolution in relation to RoW, however, such proposed changes do not require an amendment to the Acts or the introduction of a new law. Sections 10-15 read with Section 7 of the Telegraph Act provide DoT with the authority to maintain a telegraph line on any immovable property, subject to permissions provided by local authorities, and publish rules in this regard. Currently, the Indian Telegraph Right of Way Rules, 2016 regulate the establishment of underground infrastructure (optical fiber) and overground infrastructure (mobile towers and telegraph line) by licensees. We recommend that suitable amendments be made to the above rules to achieve the stated objectives.

While the government has sought to address complex and expensive RoW approvals via RoW Rules 2016 and amendments thereof, and bringing under the PM Gati Shakti plan through the Sugam Sanchar portal, on ground challenges still remains specially on charges. The DoT Consultation has stated that:

"To enable investments, new law should also provide framework for various players in telecom value chain like service providers, infrastructure providers, RoW providers etc..."

Therefore, possible amendment to the existing RoW Policy/Rules should provide legal backing across states to Telecom RoW permissions for laying fiber and installation of telecom towers etc. RoW charges must be consistent and commensurate only with the restoration charges to ensure the viability and affordability of services. Since fiber connectivity needs to proliferate with greater speeds, it is also important that the decision to lay fiber is given in a time-bound manner.

VI. Security

The Telecommunication Pipes (Core/Backbone and the Backhaul Network) as well as the various modes of last mile delivery (Faucets) that carry digital signals; also the connectivity between humans to machines, machines to machines, devices to devices, etc. is predominantly digital in nature. Since Right to Privacy has been declared as a Fundamental Right by the Apex Court of India, it is essential that both the personal and non-Personal data is secured while in transit as well as at rest (when stored). The pipes and faucets of the Telecommunication network therefore need to be secure. The Data Privacy & Data Protection Laws as and when enacted would look into the specifics. However, it is proposed that the Act should mandate secure Core/Backbone, Backhaul & Access connectivity. Government/Licensee would be responsible to the end users for maintaining the confidentiality and privacy of the digital communications over the network.

In support of the stated goals under this clause of the new proposed regulatory framework, an approach embracing global best practices is best suited for the rapid development and deployment of new technologies in the telecommunications sector. Such best practices include:

a. Continued adoption of globally, harmonized EMC & Safety standards.
b. Adopting conformity acceptance procedures modeled on practices in the EU, N. America, Australia, New Zealand, Japan etc., such as manufacturer Declarations of Conformity (DoC), supplier Declarations of Conformity (SDoC) or other self-certification and labeling procedures.
c. A system of accrediting both domestic and foreign test laboratories in a mutual recognition arrangement (MRA) utilizing accrediting bodies such as NVLAP, A2LA, ILAC etc.
d. A system of mutual acceptance of EMC, Safety and Telecom reports and data from all test labs accredited by said bodies without the requirement of repeat, in-country testing in India.
e. Adopting a system of conformity assessment procedures for out of scope or exempt devices conducted by accredited bodies that result in Letters of Opinion or other such documentation suitable to prove exemption status at customs
f. A system of enforcement that reserves the right of the Indian Government and related agencies to monitor compliance of telecommunications products by inspection and / or testing using internationally accepted statistical sampling techniques.

However, any such provision should not be in anyway made restrictive for Licensees to provide innovative services and experiences to its subscribers/users as technological changes make innovative service offerings to subscribers/consumers more and more pervasive. Hence the licensees should have full flexibility and freedom to make use of data in a safe, secure manner, and offer innovative services without any restrictions.

As technologies evolve, so do new forms of threats to the security of the nation and its people. Cyber-hacking and cyber-warfare are threats which are undeniable and inevitable. These can involve attacks on the privacy of individuals as well as on the telecom infrastructure itself. There is an urgent need for the law to account for these emerging threats and to put in place a framework which provides clarity on the duties of all stakeholders, and also the mechanism for redressal. This framework would allow companies to prioritise security within their business operations in the short-term as well as guide their long-term investment plans.

It is on these lines that the UK government has introduced the Telecommunications (Security) Act, 2021[5], which amended the Communications Act, 2003 to introduce provisions on security measures to be implemented by network and service providers to identify and reduce the risk of security compromises. There are also provisions on notification of breaches by the internet service providers, which is a significant lacuna in Indian law as it stands.

One of the most important cyber-security measures which could be adopted in India pertains to the secure design and construction of network architecture, and the subsequent development and maintenance thereof. This would serve to protect public telecom networks against security compromises.

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[5] https://www.legislation.gov.uk/ukpga/2021/31/enacted

It is also noteworthy that the UK government is seeking to introduce another separate legislation – the Product Security and Telecommunications Infrastructure Bill[6] – pertaining specifically to the security of consumer connectable products, falling under the broad umbrella of the Internet of Things ("IoT"). Given that the IoT devices such as smart TVs, smartwatches, etc. are so pervasive in homes across the country, it is imperative to secure the digital privacy of individuals and families from a telecommunications perspective, just as the Government is also seeking to ensure from the data storage perspective.

Recommendation: Introduce legislations specifically setting out the framework for the security of telecommunications at the network and product level, such as the Telecommunications (Security) Act, 2021 and the Product Security and Telecommunications Infrastructure Bill introduced by the UK government.

VII. USOF

Expanding the scope of USOF: Given that the Universal Service Obligation Fund is meant for specific uses such as development of rural telecom services and increasing telecom penetration, USOF need not be amended. Moreover, the Telecom Regulatory Authority of India (TRAI) has recognised that the rate of growth of telecom penetration in urban India has been very high as compared to rural. As per the Telecom Statistics India – 2020 published by the DoT, teledensity in rural areas was only at 57%, while in urban areas it was 153%. While several schemes have been introduced under USOF for the expansion of telecom services in rural and remote areas of the country, only about 50% of the total amount collected under USOF has been distributed. The issue of the short transfer of the levy to the USOF has also been highlighted by the CAG in its successive reports. Given this, USOF should continue to utilise its funds toward the objectives it was created for.

The consultation for the creation of any other fund such as Telecommunication Development Fund must be carried out separately, and any fund utilisation must be based on globally accepted principles of non-discrimination, level playing field, transparency, etc. Further, any such use must be agnostic to the origin of companies and must allow for the growth and fair competition of all companies in the technology space, which contribute to the growth of research and growth in India. This must also be aligned with India's international trade law obligations. For instance, we note that the Paper proposes to use the USOF for the growth of indigenous companies in the technology space. Any provisions such as this should be compliant with India's World Trade Organization (WTO) obligations, including its National Treatment and Most-Favored Nation commitments.

India's regulatory levies remain one of the highest globally. Many advanced regulatory regimes recover only the cost of administering a resource e.g. OFCOM in UK (UK Telecom Act 2003), and FCC in the USA, and Australia. Thus India's new law too should align to such global best practices.

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[6] https://www.gov.uk/government/collections/the-product-security-and-telecommunications-infrastructure-psti-bill-factsheets

Further, time has come to end the USO levy since private sector has been instrumental in achieving the objectives of rural connectivity over the years by constantly rolling out telecom networks in rural and unconnected areas. Today rural tele-density has surpassed the objectives laid down under successive telecom policies. Despite this, while USO collection has increased, the disbursement has remained low, leading to substantial unutilised accumulated surplus in the Fund. However, if it is decided to continue with the USO levy, then the new Act should expand the contributing entities.

Therefore, the new law should either abolish or freeze the levy for the next few years until the current available funds are exhausted effectively. It can then be restarted with a significantly lower rate and with increased number of contributing entities.

The present license has a provision under which all licensees contribute 5% of their adjusted revenue to the Government. In view of the large corpus available under this head, we recommend that there should be moratorium of 5 years on the USOF levy. Alternatively, the USOF levy may be reduced from present 5% to 1%.

VIII. Need to expand the geographic coverage beyond Indian borders and Indian territorial waters for the provision of satellite-based connectivity

In order to realize the vision of making India a space hub by the year 2030, satellite service providers in India should be allowed to establish gateways and TT&C centers (as being contemplated in the new space policy) that would serve both fixed and mobile satellite terminals in geographic areas beyond the borders of India and the Indian territorial waters in accordance with the rights granted to State under the international laws or that have been negotiated through bi-lateral agreements.

IX. Need to de-license satellite broadband terminals

With the advent of High Throughput Satellites both in the geostationary and non-geostationary orbit, satellite broadband is becoming a very viable alternative for broadband connectivity, particularly in unserved and underserved areas of the country. In order to help the proliferation of satellite-based broadband in such areas, the Customer or User Terminals need to be de-licensed under the Wireless Act so that the terminals can be freely imported and be made available to consumers. To alleviate the concern of security, only such terminals that communicate with a hub/gateway alone (and not point to point terminals) maybe de-licensed. The de-licensing of mobile phones under the Wireless Act has led to expansive growth of mobile connectivity in the country.

X. Penalty: Existing penalties under the Indian Telegraph Act, 1885 should be made proportional, and all Criminal Offences should be converted to Economic Offences. A separate consultation may be undertaken for this. There may be a need to clearly attribute and cap penalties for various categories of offenses to ensure that stakeholders have proportionate exposure e.g., an infrastructure provider should have different exposure than a UAL licensee. It is requested that the government identifies and publishes a detailed consultation paper about such offences.

XI. Provisions pertaining to insolvency: The provisions under the Companies Act, 2013 and the Insolvency and Bankruptcy Code, 2016 have been enacted after years of consultation and is sufficient to achieve the objectives. Given this, we recommend that there be no special provisions to deal with aspects such insolvency if existing laws and regulations provide for sufficient mechanisms. This will avoid any overlap and regulatory uncertainty for entities and will further increase ease of doing business in this sector, as it would allow for clarity for companies intending to invest in the telecommunication industry. The jurisdiction of regulators must also be clarified, to ensure ease of doing business and regulatory certainty for companies operating in this space. If any issues arise that are specific to telecoms/digital communications, these may be covered under the licensing framework or subordinate legislation. We do not see any need for change in Acts to enable this and can be carried out by changes in the licence.

The present scheme of penalties has led to litigations in the past. We believe that once the **Principles and Methodology** for Penalty Notice is published in public domain post due consultation with the industry, it has the potential of reducing future litigations in the sector and achieve higher levels of compliance. We have the following recommendations to include in the policy.

a. **Appellate mechanism:** There should be a central authority for Appeal against the show cause notice, it should be located at DoT HQ for uniform policy administration across licensed service areas.

b. **Withdrawal of Notice:** The Authority should have powers to review the response of the Licensee and withdraw the show cause notice in case the violation/ error has been rectified within specified time mentioned in the show cause notice.

c. **Compounding powers:** Once the Authority is satisfied with the corrective action taken by the Licensee, it may withdraw the notice or may impose a nominal graded penalty commensurate with the nature of violation.

XII. Simplification of the Regulatory Framework

a. **Anomaly across similar licenses** – The definition of pass through charges permissible under similarly placed licenses are different viz. the definition under UL(VNO) NLD license allows all charges including bandwidth charges paid by VNO to NSO is permitted as pass-through, however similar provision in UL NLD license is not available.

b. **Centralized Monitoring System** – All ILD and ISP licensees are mandated to connect their systems to the CMS facility, the law enforcement agencies are provided facility for on-line and real-time monitoring of traffic. This facility makes the obligation of providing physical space (10 work stations with access control) a redundant real estate facility at the Licensee gateway locations. In the recent years since the CMS system has been put in place the utilization of these 10 workstations/ desks has been negligible. We recommend that this condition may be removed from the license.

c. **Centralized IP filtering:** The present CMS system deployed by the Government has the facility to monitor IP traffic and blocking of URL, IP addresses can be done by the LEAs. We recommend that the obligation on ILD and ISP licensees for the same may be removed and the policy may be administered centrally by LEAs for uniformity and ensuring Clean IP to the nation.

XIII. Standards for Core Telecom Equipment

A. Global Standards

i. India should continue to adopt global standards for upcoming technologies for the benefit of its citizens. Adopting global standards will help Indian manufacturers to bring Indian products and solutions to the global market. This will ensure there is no fragmentation in development of products /technologies catering to one standard for the Indian market and another for rest of the world. DoT is recommended to encourage Indian R&D institutes, universities and start-ups to contribute to international standards *viz* 3GPP, IEEE, etc. and not develop a new standard that would have limited acceptability in the global space. Compliance can be monitored by inspections with internationally accepted statistical sampling techniques.

ii. When adopting global standards, there should not be tweaking of the standards. Rather unique Indian requirements and use cases may be explored within the framework of the global standards.

iii. It is important that the competence and impartiality of conformity assessment bodies are independently evaluated and verified against recognised international standards by accreditation bodies. Such conformity assessment bodies can be in a country with whom the Government of India can enter into an agreement for reciprocal acceptance of reports by Indian conformity assessment bodies (MRA-ILAC). A standard procedure for accepting reports prepared by such assessment bodies may be devised in order to ease the process and provide a single uniform standard for assessment. Conformity acceptance procedures such as manufacturer Declarations of Conformity (DoC), supplier Declarations of Conformity (SDoC) etc. may also be adopted.

B. Treatment of Consumer electronic products

i. Consumer electronic products are different from Core telecom products and solutions like Packet Core, Radio Base Stations, Microwave, Internet Gateways, Routers, Switches, etc. Consumer products have

   a) Unique requirements
   b) A shorter Shelf life
   c) Supply chain logistics
   d) Clientele and End users
   e) Marketing and Sales channels
   f) Procurement and Purchase channels
   g) Product lifecycle (Both Hardware and Software)
   h) Fast faced innovations

All of the above need special treatment either under the modified Act or under the rules that are framed. whenever telecom Acts and rules are framed and updated. Many end-consumer products and solutions are getting integrated with the internet like, Autonomous and Self-driven Cars, Smart ACs, Smart Fridges and the like. These products along with Smart Phones etc. need to be treated differently and would need to be kept out of the purview of telecom rules and testing as it is the Core telecom networking equipment which forms an integral part of a telecom/mobile network. The new Telecom framework needs to consider this new and important class of end-user products.

ii. Currently, the wide definition of 'telegraph' under the Indian Telegraph Act, 1885 brings ICT equipment and various consumer electronic products within the ambit of telecom and telecom equipment related regulations. However, so as not to be subject to the scope of hard telecom licensing associated with the enhanced scope of telecom licensees, it is recommended that the DoT in consultation with relevant stakeholders may look at excluding the devices sector and connected appliances under the M2M service provisions. Some wireless applications/functionalities may be offered as part of the device offering to the end consumers by OEMs without charging any periodic fees or one time charges, e.g. Inductive Wireless Charging. These services may not be offered by TSPs/M2M Service providers.

iii. Handling of Telecom products, solutions and consumer electronic products is a burgeoning challenge as well after its usage period / life span of usage. This is connected to dealing with environment protection and sustainability due to rapid digitisation of our society and economy. DoT considering this aspect is critical also to meet key objectives under United Nations Sustainable Development Goals (UNSDGs) to which India is a core signatory. In 2021, the Ministry of Electronics and IT release a draft paper on circular economy in electronics and electrical sector in India. DoT considering any new strong provisions to promote digital and telecom circularity in the products and solutions will have positive bearing in secondary raw materials market and in reducing carbon footprints by telecom providers, service providers and other stakeholders who are at increasing usage dependency on telecom services and networks. Promoting and encouraging circular products in the telecom ecosystem is a key to this.

iv. Specific examples of what does not constitute a core telecommunication device and therefore should not be subject to regulation include:
   a) Devices that do not directly connect to the public network and:
   b) Do not provide a telecommunication service
   c) Are not used by a telecommunication provider (ISP) to provide telecom services
   d) Are not relied upon by consumers for Internet or telephony connectivity
   e) Equipment that may enhance the connectivity but may not be a core network component e.g., switches, network transmission devices, cables etc.

XIV. Statutory levies & taxes for Fixed Broadband Services:

A. Fixed Broadband, like in other countries, to be allotted special status for overall Digital development of the country

India has the lowest Fixed broadband penetration levels with less than 8% of the total households having access to Fixed line Internet. Even developing countries like Philippines and Indonesia have more than 35% penetration levels of fixed broadband usage. An aggressive National Digital Mission aims at improving availability and accessibility of 50 mbps broadband connections to all our citizens. Towards achieving this objectives, Legislation needs to allot high priority status to this sector including encouraging this section thru PLI schemes and exemption from license fee, etc.

B. Wired Broadband doesn't use natural resources; hence levying a license fee is counter intuitive and counterproductive to internet availability

Spectrum is a scarce natural resource and it would only be right if the Government decides to levy appropriate license fee (such as spectrum license fees) for its use.

Wire line broadband on the other hand does not involve use of any such scare natural resource. On the other hand, Wired Broadband ISPs invest huge capital on Right of Way, technology to create their own infrastructure and therefore it would only be fair that it is not be subject to any additional levy such as license fee. Telegraph Act, when enacted many decades ago, didn't envisage this aspect given the abysmal understanding of this technology and didn't seek to differentiate between wired broadband and wireless broadband.

XV. Policy/Rules for Infrastructure Providers

a. Considering the present financial health of the telecom operators, we feel that the enhanced form of infrastructure sharing i.e. Active Infrastructure Sharing by IP-1 is the only way forward for the industry. And that should be taken care of while framing the new legal framework.
b. Word "Active" & Passive should be removed and replaced with "Services" and "Infrastructure".
c. Towers to be classified as plant and machinery.
d. Any damage / vandalism of telegraph apparatus or site or location having telegraph apparatus should be classified as a non-bailable and cognisable offence. Further, a provision should be proposed in the Act that any/all authorities and agencies (e.g., civil, utility) whose work may have a bearing on a Telegraph asset (e.g., Fiber/ Tower) must mandatorily give an advance notice of 30 days before commencing the work on the route so that TSPs / IP1s can make appropriate arrangements of any damage, cuts, etc. In the absence of such timely and appropriate notice, the agency/authority/entity must compensate for the damage and loss caused to the TSP and/or IP1.
e. Disruption of telecom infrastructure to be a criminal offence. Temporary stopping / shutdown orders in an area/district/state must be only through an SOP approved by DoT, and Telegraph being a Union subject, only the Central government should be the governing authority in this regard.
f. RoW Rules including any amendments from time to time must be incorporated in GatiShakti Portal.

XVI. Infrastructure: Enabling provisions for creation of Digital Infrastructure is mandatory for Telecommunication services. Since it has been stated that Digital Connectivity be accorded the highest priority, it is the responsibility of the Government to ensure that necessary digital infrastructure is created in a time bound manner. Government may on its part create suitable provisions in the Licensing conditions to ensure sharing of active and passive infrastructure, time bound permissions by local administrative authorities for creation of infrastructure in their jurisdiction. Standards of encryption and necessary security measures (physical as well as digital) can be covered under the Rules based on the latest standards and technologies.

XVII. Interconnection between IP-PSTN: As highlighted in the TRAI's consultation on '*Enabling Unbundling of Different Layers Through Differential Licensing*', it was stated that the Government decided to implement this regime in two phases, in the first phase, UL regime was introduced in 2013, and in the second phase, towards the delinking of licensing for networks from the delivery of services, a new category of Unified License (Virtual Network Operator) was introduced in 2016[7].

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[7] https://www.trai.gov.in/sites/default/files/CP_09122019.pdf

The original intent of the delinking of the licensing of Networks from the delivery of services to the end users could have been optimal and efficient use of network infrastructure and spectrum. However, the advent of the UL(VNO) License regime has not brought about significant transformation in the area of network related services.

One of the biggest impediments to this unified licensing approach has been the challenge pertaining to interconnection of IP and PSTN. According to the Section 2 Scope of Service of the UL (VNO) License Agreement[8]:

> *(ii) The Internet Telephony, only as described in condition (ii) above, can be provided by the Licensee. Voice communication to and from a telephone connected to PSTN/PLMN/GMPCS and use of E 164 numbering is prohibited*

Potential VNO Operators are mandated to expand their licensing requirements with an additional license – the Unified License – to enable services in India, primarily because of this concern. This has inhibited the wide adoption of the licensing regime and promulgation of pivotal services in India.

It is important to note that Cloud based conferencing services help large and small organizations to collaborate with internal employees or with any external participant using internet, Closed User Group (CUG) or Public Switched Telephone Network (PSTN). According to 6Wresearch, India unified communications (which primarily include voice, video and messaging based communications) and collaboration market is anticipated to record CAGR of 12% during 2017-23[9].

India's current IP-PSTN barrier poses a significant challenge to the innovators developing these services and to the consumers and enterprises that use them. This impacts Indian consumers and enterprises directly, as they are often forced to use significantly pared back versions of the services. It also impacts India more broadly as service providers and innovators will increasingly consider developing and testing new advanced services in other countries.

Today, Indian customers are serviced with International Bridges (mostly Singapore/US), by carrying all IP traffic and PSTN traffic (international long distance) to international location. This is because Indian regulations do not permit to mix VoIP and PSTN call, i.e. one cannot make a phone call from internet to a PSTN/mobile number or vice versa. The initiation and the termination of the call needs to be on the same side, either on PSTN/mobile or on the internet.

XVIII. Last mile access/connectivity: Access to last mile connectivity and availability must be permitted without any discrimination, restriction, or interference. Practices like blocking, slowing or granting preferential data speeds or special treatment of any content which is not categorized under "Essential or Special Services" must not be allowed. In case there is a need for imposition of black-out of communication in specific regions for Internal Security reasons, LEA may request so, to the Competent Authority- who in turn would ensure that the same is done in a time bound manner. In-fact we suggest that any temporary stopping / shutdown orders in an area/district/state must be only through an SOP approved by DoT, and Telegraph being a Union subject, only the Central government should be the governing authority in this regard. The current ad-hoc requests and orders to stop internet services in an area e.g. during states' examinations causes significant inconvenience to local public at large. Mandatory provisioning of the last mile connectivity at Minimum Data Speeds as prescribed by TRAI everywhere including those in economically backward, geographically inhospitable, remote areas need to be factored in the license conditions. The various provisions of the USOF Fund to provide connectivity equity and network decentralization can be revisited. Keeping in the mind the vastness of the country and its diverse needs, introducing provisions for community networks with a specific licensing and registration can be looked at without compromising national safety and security. This provision can be also looked at through the lens of provision for community radio licensing to approved NGOs/ CSOs and Academic institutions by the Ministry of Information and Broadcasting.

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[8] https://dot.gov.in/sites/default/files/2018_08_31%20UL%20VNO%20A.pdf

[9] https://www.electronicspecifier.com/products/communications/unified-communications-and-collaboration-market-to-grow-at-12

XIX. There is lack of clarity on adoption of UL license of a Virtual Network Operator (VNO) license. The National Digital Communications Policy 2018 under the National Broadband mission has listed convergence in areas such as IP-PSTN switching as one of the strategies. The convergence is much needed to realize the full potential of the VNO license.

Recommendation (a): Expand the scope of UL (VNO) License to include interconnection between IP and PSTN requirements by the VNO licensee.

Digital services
India has made remarkable progress in mobile services in the last two decades starting 1996 to 2022. The telecom service providers have made large investments in networks and bridging of digital divide is visible.

However, with the advent of technology new and innovative services have evolved, these new services are leading to increase in workforce productivity through collaboration and information exchange. The usage of traditional telephone connection has moved beyond the basic *'need to talk'*. The concept of integrated communications platform is fast emerging where data, voice, instant messaging, documents and screen can be shared seamlessly across devices and platforms.

This integrated communication is provided in the 'services layer' with the underlying 'network layer' sourced from telecom service providers. The new legal framework should facilitate the advent of this new technology through *a light touch licensing regime*.

There are various service area wise compliance requirements under the current license regime, these add to the burden of compliance for a 'service licensee'. Hence there is a need for Virtual network license with National jurisdiction for Digital Services, this is similar to the M2M Category A service authorisation.

Recommendation (b): Expand the coverage of UL (VNO) License to National Service Area for Digital services in the true spirit of 'One Nation One License' policy.

The concept of communication in the age of 'telegraph' was point to point communication, later it graduated to bridging, wherein more than one person could participate in the conversation.

With the advent of IP technology, many more forms of communication have emerged viz. contact centre, meetings, conference, screen sharing, integration with other desktop software, whiteboard etc.

Hence, there is a need to distinguish between public telecommunication network and other communication network (or business communication network)

- **Public telecommunication network** – where a user identifiable number is allotted to the end user with an ability to make a call and call back in real time. This is subject to lawful intercept under proper authorisation.

- **Other communication network** - where more than one persons communicate, but there is no ability to make a point to point call / call back in real time, as there are no user identifiable number. This should be exempt from lawful intercept.

Recommendation (c): The distinction in law should be made for Public telecom network and other communication network. There are many conditions in Part-1 of the Unified License / UL(VNO) that are not squarely applicable to Digital Services.

XX. Quality of Service: At present, there are twelve Telecom Services being provided by the Service providers. As we move forward, several innovative services may evolve to meet the requirements; Government intervention/regulation of these services is not recommended. However, it is equally important to ensure that adequate Quality of Services(QoS) are provided to the users- Need for the Regulator to frame regulations and regulate the QoS will therefore be essential. In this regard, the Regulator be enabled with Quasi-Judicial powers to effectively discharge its role.

XXI. Need for endorsing principle of service neutrality along with technology neutrality in the statute

All telecom services (wireline/wireless /any other) should be treated at par. Degree of proportionality must be applied. In all other cases, only those services which are accompanied by unique rights viz. scarce & precious natural resources viz. spectrum, right of interconnection, right of acquiring unique numbering resources, etc. should be treated in a differentiated manner preferably through a license based permission, albeit a light-touch one.

XXII. Need to grow competition and statute must enable that all players should get access to resources at reasonable cost

(i) Access to Common Telecom Infrastructure (CTI) – both on public roads, highways and inside public & private buildings should be encouraged to promote competition

(ii) Mandate for entering into Reference Agreement for sharing of infrastructure with oversight by the Authority

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BROADBAND INDIA FORUM
"Think Tank for Digital Transformation"

ADDENDUM to BIF Response to DoT Consultation Paper on "Need for a new legal framework governing Telecommunication in India", dated 1st September 2022 (Inputs from Prof. V. Kamakoti, Director-IIT M and Prof. R. Ganti, IIT M)

Renaming of the Act:

1. It is suggested that the Act may be called the *"Indian Telecommunications and Remote Communications Act"*, essentially integrating the applications of Telecommunication technology with the exponentially emerging paradigm of *"networking and virtualization"*.

2. The fundamental essence of the Indian Telegraph Act, 1885, must be retained in all generic terms. Nevertheless, it may be added to make a pertinent note that the significant aspects of communication using various transmission types over media such as copper, optical cable or RF-wireless, satellite, etc. are made universally (within the geographical/political boundaries of India) available.

Spectrum Related aspects

3. There needs to be a clause, which in essence, should be in sync with globally accepted spectrum availability for generic use of unlicensed bands and all associated technologies in a time bound manner, and the policies should never be seen as "restrictive or unclear" (Example: Wi-Fi 5, Wi-Fi 6).

4. The act must specify in clear terms the regulatory aspects that would be governed by agencies (DOT/WPC, etc.) which would ensure safe, clean, green and equitable access to all the citizens in India. Example: EIRP/ERP (Effective Isotropic Radiated Power/ Effective Radiated Power), wireless, guaranteed speed, maximum downtime, etc.

Rules basis the Act

5. While the main act and regulations can be simple, a set of annexures/appendix may be drafted which would essentially give a guideline framework of contextual do's and don'ts to the service providers.

6. In the legal/regulatory framework, explicit clauses may be added which should specify the superseded/continued acts, rules, regulations, notifications.

7. A guideline for contextual interpretation and application of the act/regulation may be devised and added as an appendix/annexures.

8. Global Standards: India should continue to encourage its institutions and organisations to contribute to and influence the global standards.

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Suggestions/Recommendations
on
Consultation Paper released by DoT on 23-07-2022
regarding

"Need for a new legal framework governing Telecommunication in India"

TEMA CMAI thanks the Govt. for such a wonderful decision to review the new legal framework governing Telecommunications in India. This was much needed since long, as original Indian Telegraph Act was promogulated in 1885, much before independence.

We would first like to submit on record of the appreciation of the thought and decisions taken by our Hon'ble PM and MOC, MOS in this behalf to have a review and provide ample opportunity to all stakeholders to respond.

Our special thanks to MOC for the vision as contained in the first para of the consultation paper itself:

> *Telecommunication has the potential to unleash the true power of India's economy, accelerate socio-economic transformation and enable achievement of the vision of an "Aatma Nirbhar Bharat". Telecommunication is an enabler of digital governance that emphasizes data driven and people-centric delivery of goods and services to citizens and enterprises. Universal, resilient, secure, accessible, and affordable telecommunication is indispensable for an inclusive India as we strive towards the ideal of "antyodaya".*

Based on feedback from our members and other stakeholders and based on the above objectives in mind, we would like to submit as under:

1. As is mentioned in the consultation paper, the following Acts are applicable as of now for Indian telecom sector:

    (a) The *Indian Telegraph Act, 1885.*
    (b) The *Indian Wireless Telegraphy Act, 1933.*
    (c) The *Telegraph Wires (Unlawful Possession) Act,1950.*
    (d) The *TRAI Act,1997*
    (e) The *Information Technology Act, 2000.*

2. The telecommunications today have grown much more than a telecom or a phone call. It encompasses video, surveillance, data, and across all

economy sector like health, agriculture, education, social security, etc. That would mean importance of the telecom sector across all economies.

3. The sector also has moved from Govt monopoly and exclusive right over manufacturing and operations to 100% private manufacturers, whether 100% foreign or Indian ort mix equity operators and manufacturing and new players called OTT.
4. The exclusive provision authorizing to Central Govt was a conscious decision, as telecom relates to defence and National Security of India. However, presently, Central Government does not provide any Telecom Service directly to the citizens, except for defense uses. It is either by PSU or private Operators.
5. There is also big convergence between IT, broadcasting and telecom. With advent of technology the differences are blurring and more and more uses are being developed. The coming of 5G and 6G will entirely change the world and the way we live in this world. Coking of 5G also brought in concept of captive Networks, which are not connected to public network and are for used within the industry/enterprises and cutting off from entire world outside the industry. The 5G and 6G also brought in concept of talk/communications between human, products, machines and internet of things etc.

6. In view of above there has been major shift in telecom sector to safeguard from National Security aspects as also cyber risks, data loss and theft.

7. India started National Security Directive on Telecommunication Sector on 16th December 2020, (NSDTS) also known as trusted products policy applicable as of now on Telecom Operators, though promulgated to all products connected to Indian telecom network.

8. Simultaneously in Sept, 2017 amendments were issued in the Indian Telegraph Rule- 1951 regarding Mandatory Testing and Certification of Telecommunications Equipment (MTCTE). This was for all products connected to telecom network. The MTCTE applies to all products whether imported or locally made and whether procured by operators, enterprises, industries or private citizens.

9. Also, for the purpose of customers safety against electric shocks, current leakage etc., the concept of some products under Compulsory Registration Orders (CRO) was started based on testing by accredited labs of BIS.

10. There is overlap to some extent and remedial measures of exemption of five products form MTCTE has since been ordered. The NSDTS was started as directive on security by inclusion in the License conditions, MTCTE as per Indian Telegraph Rules and CRO under BIS Act, being administrated by Meity.

11. Another shift has ben from earlier a global supply chain to localization due to realization during covid days that any country and stop supplies at click of a button, making the country starved of the products, technology and components.

12. Telecommunication has been included in the *"Essential Services Maintenance Act,1981"*; also, being a strategic asset, Telecommunication has been identified as a National Critical Information Infrastructure.

13. sector, economy, manufacturing etc to continue functioning.

14. The definition of 'Telegraph' in the ITA 1885 is very broad, encompasses all means of telecommunication, even the futuristic Free Space Optics for communications. Section 4 of the Act provides all necessary powers to the Government. It has allowed Telecom liberalization and privatization, etc.

Suggestions:

1. "Telegraph" has little or no significance in the modern times, hence it is suggested that the new/ revised Act may be called the **"Indian Communications Convergence Act"**.
2. The Broadcasting sector is also governed by the Indian Telegraph Act,1885. We feel there is need to include necessary provisions in the new Act to cover broadcasting sector.

3. The need for connectivity has already been recognized in various Courts, UN, as per brief at Annexure A. It is suggested that "***Right2Connectivity be declared as a Fundamental Right***" under the new act.

4. The Act need to provide explicitly as a responsibility of Government to provide infrastructure and connectivity, to be supplemented by licensed and authorized operators/franchisees. This would do away the problems connected to Right of Way. This is already done as of now for telecom operations and allowed to be operate by private entities as a licensee of Government of India.

   Thew present Act authorizes the local authority to impose terms and conditions. The above suggested provisions will provide safeguards from this.

5. The provisions relating to NSDTS be included in the new Act. Proper amalgamation of the NSDTS, MTCTE, CRO needs to be brought in and mandate in the Act itself. The **mandatory security and other testing & certification should be a part of new Act, rather than Rules.**

6. Access to customer also known as last mile connectivity and availability must be without any discrimination, restriction, interference. Practices like blocking, slowing or granting preferential data speeds or treatment of any content must be not allowed. In case there is a need for imposition of black-out of communication in specific regions for Internal Security reasons, appropriate provisions be included in the new Act with adequate safeguards and provisions for review as also alternatives available to citizens in such situations either through Govt or licensees or by suitable provisions to use non digital ways and means.

7. There is need to include towers, equipments, networking as also access device such as mobile handsets, laptops, tablets, fixed line phones etc. in the definition of the new ACT and to be governed by provisions of National Security.

8. There is need to include provisions relating to allotment of spectrum by Govt by auctions or administrative way in case of appropriate needs.

9. We also recommend exemption from licensing of captive indoor/in campus wireless networks and more Frequency bands to be added for unlicensed indoor usage such as 6GHz WI-FI6e and V band Wi-Gig

10. The provisions in the new Act for penalties needs to be kept, but criminal offences to be changed to Economic offences, unless severe National security is affected.

11. To achieve Ata Nirbhar Bharat in Telecom, following suggestions are submitted:

   i) There is need for appropriate provision in the new Act for mandatory following of the Govt policies on PPP MII in all procurements, by providing suitable incentives to telecom operators.

   ii) The consultation paper rightly captures need for standards:

   > ***Standards. Public safety and national security***
   >
   > *26. A new law needs to have appropriate provisions for addressing situations of public emergency, public safety and for taking measures* ***in the interests of national security***
   >
   > ***27. Such a law needs to provide enabling framework for the Central Government to prescribe relevant standards for telecommunication equipment, telecommunication services, telecommunication network, telecommunication infrastructure. The aim is to ensure public safety.*** *This is all the more crucial given the widespread use of telecommunications, whether for education, or entertainment, or tele-medicine, or facilitating e-mandis*

   Yes, there is need for appropriate provision in the new Act for one Country one standard for telecom products, as framed by TEC, DOT or BIS.

   iii) There is need for appropriate provision in the new Act that provisions of mandatory PPP MII applies for telecom products (to be notified by DOT) even in the case of Turn Key/System Integration projects.

   iv) Research and development of Indigenous Telecom Equipment & Technologies and to encourage the local manufacturers, a Technology Development Fund be set-up under the provisions of the Act with mandatory provisions for opportunity for trials and initial orders/deployment on predetermined price discovery mechanism and allotment of spectrum as may be needed on administrative allotment basis.

v) DoT in May, 2017, issued a Notification regarding provisioning of Submarine Optical Fibre Cable connectivity between Mainland India (Chennai) and Union Territory of Andaman and Nicobar Islands. More such cables will be laid in future. Capital Expenditure incurred will be borne by Central Government/DoT and will be funded by the Universal Service Obligation Fund. There is need for appropriate provisions in the new Act for localization of sub marine cable manufacturing and installation capabilities, looking at National Security aspects in this behalf.

12. There is need, as per the requirements of the right to privacy to be guaranteed by the Constitution, by making appropriate provisions in the new Act.

ANNEXURE A

IS THE RIGHT TO CONNECTIVITY A FUNDAMENTAL RIGHT?

As per the law of the land, it is a legal right. However, by interpretation, could be construed as a fundamental right. While the right to connectivity is a legal right, by implication and interpretation can be considered fundamental under Article 21 of the Constitution of India that guarantees 'protection of life and personal liberty' that's so integrally linked with being connected in this day and age.

In the *Anuradha Bhasin vs Union Of India case*, on 10 January 2020, the Apex Court was of the view that the freedom of speech and expression and the freedom to practice any profession over the medium of the Internet enjoys constitutional protection under Article 19(1)(a) and Article 19(1)(g). Further, the Apex court held, that suspending internet services indefinitely is impermissible under the Temporary Suspension of Telecom Services (Public Emergency or Public Service) Rules, 2017. It can be suspended for only a temporary duration. Further, any such order of suspending the Internet under the suspension rules is subject to judicial review. This petition was contesting the government's decision to suspend the telecom network in Kashmir as a preventive measure for 192 days.

However, even the fundamental rights are not absolute. The judgement balanced the need to uphold guarantees under Article 19(1)(a) and 19 (1)(g) and the perceived danger in the direct line between access to the Internet and extremism and terror-as it was argued that the traditional warfare methods were inadequate to meet cyber-terror threats, particularly, in the context of a 'war on terror'.

In another landmark judgement-*Faheema Shirin R. K v State of Kerala & Ors WP (C) No. 19716 of 2019 (L)*--the Keala High Court held that the Right to use the Internet is associated with the Right to Education and Right to Privacy under Article 21 of our Indian Constitution. "In this case, the rule was that mobile phones shall not be used in the hostel. Therefore, what remains is only the decision/instruction restricting/banning the use of mobile phones from 6 pm to 10 pm and the direction to surrender the mobile phone to the warden. When it is already found that such an action infringes the fundamental right to freedom as well as privacy and will adversely affect the future and career of students who want to acquire knowledge and compete with their peers, such instruction or restriction cannot be permitted to be enforced," the High Court concluded.

In addition, the United Nations incorporated it into their charter by declaring the internet a human right and amending Article 19 of the Universal Declaration of Human Rights (UDHR). The UNHRC General Assembly has already called it a fundamental human right. Many countries have since followed suit and made similar declarations like Estonia (2000), Greece (2001), European Union (2009), France (2009), Finland (2010), Costa Rica (2010), Spain (2009), Canada (2019). India should be one of the first Asian countries to do that.

INDIAN
SPACE
ASSOCIATION
ISpA
Bhumandal Se Brahmaand Tak

Ministry of Communications
Department of Telecommunications (DOT)
Sanchar Bhawan, 20 Ashoka Road
New Delhi- 110001

Sub: ISpA Response to DOT's Consultation Paper on 'Need for a new legal framework governing Telecommunication in India'

At the outset, we thank the DOT for carrying out this consultation for considering the submission of the Industry for a new legal framework governing Telecommunication in India. The intentions behind formulations of new legal framework are appreciated.

Introductory Comments

1. The Hon'ble Prime Minister, has emphasized on the vision for making India a global leader and "Aatma Nirbhar". The need of the hour is an enabling policy framework that fulfils the Prime Minister's vision.

2. A holistic legal framework is required that reflects the changing digital landscape while reducing costs and barriers to network creation, deployment and expansion , it will deliver the best outcome for both the economy and society at large. Telecom legislations also has a critical role to play on adoption of emerging technologies, so it is important to have future ready legal framework addressing the realities of telecommunication in 21st Century India.

Important Recommendations

4. The Consultation Paper has been examined in detail which included in-house brainstorming with Industry Members as well as experts who have been working in the Space & Telecom area. **The key aspects which merit consideration are summarised as below :**

(a) *Spectrum allocation has to be globally harmonised as per agreed ITU norms.*

(b) Space in a nascent industry in India. It needs to be ensured that in future we become a net exporter of space equipment and any space communication infrastructure including satellite. Hence, commonality in spectrum allocation is critical.

(c) The spectrum in Satellite Communication services is more efficiently utilised as ***the same spectrum is shared by multiple satcom service providers****, also the nascent Space industry presently* ***does not have the ability to procure spectrum in auction by competing with the Telecom service providers****. It should hence be allocated administratively as is the larger global practise*

(d) ***USO Fund usage*** *needs to include* ***use of satellite communication*** *for providing connectivity to far-flung areas and difficult geographies. We need to find a more efficient way of overcoming the digital divide. Connecting the unconnected where fiberisation cannot reach due to difficult terrain or high cost.*

(e) The new Telegraph Act needs to cover not only the areas of national borders but beyond as by 2030 India should be a net provider of terrestrial and space communication to our periphery and maybe beyond.

(f) Any decision of sharing of frequency bands needs to be done after the aspects of interference and its management are comprehensively studied and resolved.

(g) It is highly essential that a robust online single-window platform should be made available to the stakeholders and the cases/requests should be processed in a transparent manner within a reasonable stipulated period.

5. ISpA has collated from inputs received from a wide variety of experts and industry which would include R&D, Production, Installation and Operators as well as Consultants who have been professionally associated with Space, Telecom & other related sectors. Consolidated comments are placed under **Annexure A** and Additional comments for consideration under **Annexure B**. It is hoped that the final framework would address these aspects along with other suggestions provided.

Lt Gen AK Bhatt (Retd)

Director General, Indian Space Association

Annexure A & B : As Stated

Annexure A

Consolidated Comments from Industry on DOT Consultation Paper on 'Need for a new legal framework governing Telecommunication in India'

1. We would like to thank DOT for coming up with the consultation paper related to 'Need for new legal framework governing Telecommunication in India'.

2. The telecom Sector is primarily governed by *Indian Telegraph Act, 1885*. & The *Indian Wireless Telegraphy Act, 1933*. These laws have helped telecom to flourish in India & to become second largest telecom network in the world, in terms of number of subscribers.

3. The telecom legal framework is required to ensure that all citizens, users get access to affordable telecom networks and service providers can utilise various technologies to deliver the services to the customers.

4. It is important that the overall regulatory framework addresses the following objectives -

   (a) Connectivity to all, be it citizens, enterprise, or government users - irrespective of the location.

   (b) Flexibility and agility of regulatory framework to adapt to changing technology and services trend.

   (c) Ease of doing business for the industry stake holders involved.

   (d) Harmonized with global best practices arrived at international forums like ITU

Simplification of the regulatory framework

5. New law & rules should be agreed by all stakeholders through a consultative, consensus building process ensuring protection of existing investments and services. New rules should not suspend the existing

services, licenses unilaterally unless agreed by existing service providers, including with mutually agreed timelines for implementation of any such new rules.

6. No coercive action: Foremost, there should not be coercive action taken against TSP/telecom infrastructure providers by local/municipal/state authorities like arbitrary sealing of towers or VSATs or electricity disconnection etc. or asking for additional fees w.r.t. towers or VSATs. Currently, the service providers are involved in needless litigation in courts against coercive actions by municipal and local authorities in different States across India.

7. Single window clearance with deemed approval: The current process of issuing approvals/ clearances is time-consuming and cumbersome. It is highly essential that a robust online single-window platform should be made available to the stakeholders and the cases/requests should be processed in a transparent manner within a reasonable stipulated period.
For timely processing of applications for various approvals/clearances, concept of deemed approval should be introduced.

8. DoT should ease service providers w.r.t. regulatory burden and reducing compliance cost, which is the theme permeating through NDCP-2018.

Spectrum Management

9. Spectrum is national resource and should be utilised to deliver connectivity to all including unserved and underserved areas. Different technologies address specific needs of the industry/segment and thus need to co-exist to be able to serve the society & citizens. The spectrum should be made available for each of the relevant technologies and thus the treatment or **principle of allocation of spectrum need to be defined accordingly**. The objective of the policy should not be just related to increasing the

commercial value for government in terms of license fee and/or spectrum auction proceeds etc., but also to enable the use of different telecommunication technologies for serving all applications and geographies including unserved and underserved.

10. The overall spectrum required under Satellite Communication services is more efficiently utilised as **the same spectrum is shared by multiple satcom service providers**, while in case of cellular technology, each of the service providers will need to have its own spectrum in the area of operation. Satellite Communication industry is a very small part of the overall Telecom industry, and hence **does not have the ability to procure spectrum in auction by competing with the Telecom service providers**.

11. The commercial yield per unit of spectrum may be different for different technologies. As such it is important to have spectrum allocation principles which are well suited for each of the technologies. The global best practices, the way the spectrum is used – dedicated or shared, should be considered while deciding on the method of allocation of spectrum to individual technologies. It is important that a holistic view is taken w.r.t spectrum, so that different relevant technologies are allowed to co-exist, prosper, and serve the needs of various Industries/regions of India most optimally.

12. The spectrum usage is identified collectively at the ITU, wherein India is also a signatory, towards an interference free globally harmonised services enablement for various users of the electromagnetic spectrum.

13. The allocation of spectrum in public interest needs to **align with international best practices.**

(a) The **international norm is for administrative allocation of spectrum for satellite spectrum** that is aligned and harmonized as per ITU identification. We strongly recommend that India should also follow this principle.

(b) Distinction in assignment of Cellular and Satellite spectrum is consistent with other countries across the world.

14. It is reiterated & emphasizes that **the Satellite Communication services industry cannot sustain by procuring Spectrum through auction** in India.

15. In case the spectrum treatment was to be equal irrespective of technology and it is left to assignee to use as its own wish across various technologies then it may result in monopolistic market practice with only handful of Telecom operators buying all the spectrum and controlling the overall telecom services in India.

16. Spectrum should be allowed to be used for specific purpose only for which the spectrum is being taken from the regulator. Periodic review should be done w.r.t. effective utilisation of spectrum and if spectrum is not utilised that assignee should be required to surrender the spectrum back to regulator so that regulator may allocate it open allocations to qualified service provider as per rules. Spectrum should be allowed to be used for specific purpose only for which the spectrum is being taken from the regulator. Periodic review should be done w.r.t. effective utilisation of spectrum and if spectrum is not utilised that assignee should be required to surrender the spectrum back to regulator so that regulator may allocate it open allocations to qualified service provider as per rules.

Repurposing of Frequencies as an Exception

17. Repurpose of frequency range is not commonly done globally, it has been done in only in select country for very specific need .Any repurposing of frequency range will be mammoth task and will involve following factors, which will need to be addressed:

a) **Cost**: requires will have huge cost to the existing service providers who would have put in crores of investment to build the infrastructure and will have huge cost implications in case of repurposing of the frequency range.

b) **Technical & Business viability for existing services**: Existing services in the frequency range in question need to be evaluated wrt technical viability to alternate frequency range. Similarly, if the new proposed frequency range is puts it any commercial or technical disadvantage then the business viability for existing services itself may be challenge.

c) **Services continuity:** It will need to be ensured that existing services on the frequency range in question are not disrupt in anyway while execution of this repurposing of the frequency range.

d) **Alignment to Global ITU norms:** The compliance & alignment to global ITU norms are important to ensure alignment to available eco-system of equipment, protocols etc. so that consumer of the services continue to get best services at affordable price.

18. Repurposing of frequency range of different use/technology if required and unavoidable, should not be done at the cost of any existing industry/technology.

Expanding the scope of the USOF

19. Universal Service Obligation Fund (USOF) was established to ensure that the telecom services are made available in rural and remote areas as well. USOF should fulfil its agenda to serve larger public interest of ensuring delivery of universal telecommunication services to underserved & unserved areas. When still there are thousands of villages which are yet not connected and lacs of villages which are not connected with high-speed telecom links, there is enough for USOF to focus and deliver to its agenda.

20. We recommend that the **USOF should also cover the Satellite Communications industry** as it is capable of reaching out to the remotest corners of the country and provide the extremely important remote village connectivity obligations for the country. USOF should be **extended to overcome the digital divide by subsiding LEO constellation and Ground Equipment.**

Penalties

21. We agree that Penalties should be proportionate to offences and accordingly new rules need to consider the same. High level of penalty sends a wrong message to the industry and dampen the fragile environment.

22. Penalty for violations should not be automatic and instead should be dealt on a case-to-case basis with technical and financial checks. Presently, in the absence of any laid down guidelines, Service Providers are often imposed the maximum penalty even if violations are of a minor nature.

23. DoT should streamline the process and rationalise the penalty structure and in doing so, DoT should consider – (i) single penalty provision instead of separate penalty for different violations; (ii) penalty to be classified into two buckets – (a) minor violations; and (b) major violations. There can be list of violations that would fall in each of the two categories; (i) there should be a reasonable maximum cap on both categories of violations; (ii) first time violation should not attract penalty at all; (iii) penalty should be imposed per violation and not per subscriber.

Annexure B

ADDITIONAL IMPORTANT COMMENTS/SUGGESTIONS FOR CONSIDERATION

We would like to draw attention to the following additional comments and recommendations provided by Industry, given their importance in building the new legal framework. These are all requests from industry to ensure the space & telecom economy accelerates in India.

Need to de-license satellite broadband terminals from the Wireless Act

1. With the advent of High Throughput Satellites both in the geostationary and non-geostationary orbit, satellite broadband is becoming a very viable alternative for broadband connectivity, particularly in unserved and underserved areas of the country. In order to help the proliferation of satellite-based broadband in such areas, the Customer or User Terminals need to be de-licensed under the Wireless Act so that the terminals can be freely imported and be made available to consumers. To alleviate the concern of security, only such terminals that communicate with a hub/gateway alone (and not point to point terminals) maybe de-licensed. The de-licensing of mobile phones under the Wireless Act has led to expansive growth of mobile connectivity in the country.

Spectrum has 'Public Good' element in it

2. Networks resiliently absorbed the shock from the Covid-19 pandemic, underscoring importance of spectrum as a national resource for the **'Public Good'**, also endorsed by the Hon'ble Telecom Minister[1]. The cost of spectrum impacts the total cost of telecommunications services and the sustainability of the telecommunications industry itself. It is essential that spectrum allocation and pricing has as its bedrock the element of 'Public Good'.

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[1] [1] https://www.zeebiz.com/india/news-public-good-element-in-spectrum-pricing-now-widely-recognised-telecom-minister-ashwini-vaishnaw-173290

Further, as new spectrum users emerge, we need to have a clear decadal roadmap for spectrum assignment and allocations, with clearly defined terms and conditions (T&Cs).

Sharing of Frequency

3. Any decision of sharing of frequency needs to be done after the aspects of interference by only **Neutral Competent Agency**. New law should enable utilisation of spectrum in technology neutral manner. Law needs to contain provisions for **re-farming and harmonization of frequency range** with global ecosystem. Maintaining policy continuity, allowing the existing spectrum (and exemptions) assigned at present to continue for a specified time period.

Wider consultation amongst stakeholders on co-creation of digital infrastructure

4. Fruits of broadband connectivity have been reaped equally, by providers of streaming, social media companies as well, who are also the biggest drivers of traffic on network today. There is need to deliberate on an appropriate mechanism among TSPs, OTTs, Big Technology companies about contribution towards creation of digital infrastructure. There is a growing debate globally about fair and equitable contributions from all such stakeholders who contribute towards creating traffic and thus impact network investments and capacities.

Take into account convergence in technologies and platforms

5. Due to the convergence in broadcasting, telecom and IT services, it is possible to distribute Satellite TV channels on Telecom networks or through internet platforms like OTTs. However, in case of online communications platforms there is a lack of clarity in the existing licensing conditions. The new law should duly take note of such convergences and include provisions to ensure consumer interest, and ensure level playing field amongst various DPOs.

Support financial sustainability of the industry

6. New law should support financial sustainability of the industry to build and invest in network infrastructure. It should be future proof, bring regulatory certainty and be applied prospectively.

Right of Way

7. Aligning with global best practices and the best global regulatory regimes; It should (i) Promote use of industry 'self-regulation' (ii) Implement Right of Way in letter and spirit.

Framework for mergers, acquisition etc.

8. M&A– simplify, streamline and work in tandem with NCLT proceedings

9. New Law/legal framework should protect existing investment and existing regulatory terms till the time, new law/terms come into effect.

Need to Expand the Geographic coverage of the Act beyond Indian borders

10. Need to expand the geographic coverage of the new framework/ Law beyond Indian borders and Indian territorial waters for the provision of satellite-based connectivity, as India in future will become a net service provider in our periphery and beyond .

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Feedback from NASSCOM & DSCI on the

Consultation Paper on the Need for a New Legal Framework Governing Telecommunication in India

to the Department of Telecommunications

September 1st, 2022

1 Summary of recommendations

1. *The DOT should follow up this Paper with a detailed consultation paper and a consultation process that adopts the process of the TRAI.*
2. *The scope of the new framework should be limited to the operation of telecom facilities & systems and the provision of telecom services. These should be defined using the layered approach to regulation.*
3. *Shift away from licensing individual service providers by default and introduce a risk-based approach to licensing & regulation.*
4. *Introduce a mechanism in the primary law requiring the periodic review and assessment of licensing & regulation.*
5. *Modernise spectrum management by incorporating the recommendations of the Comptroller and Auditor General of India (CAG) and establishing a principles-based legal framework.*
6. *Open markets by recognising 'one India, one circle' across the board.*
7. *Rationalise existing license conditions that serve as barriers to market entry.*
8. *Establish formal timelines for approvals and permissions.*
9. *The security duties of participants in the telecom ecosystem should be clearly defined and be accompanied with a grievance redress mechanism.*
10. *New security and safety standards for the telecom ecosystem should be compatible with global standards.*
11. *Align the framework for interception with the fundamental right to privacy.*
12. *Introduce a performance assessment system for any future iteration of the USOF to ensure funds are used transparently, timely and to achieve measurable outcomes.*
13. *The existing institutional arrangements between telecom regulators should be re-examined and aligned with international best practices.*
14. *The new framework should formalize regulatory governance.*

2 Introduction

The National Association of Software and Service Companies (**NASSCOM**) and the Data Security Council of India (**DSCI**) welcome the opportunity to submit our feedback on the Consultation Paper on the *"Need for a New Legal Framework Governing Telecommunication in India"* (**Paper**) released by the Department of Telecommunications (**DOT**).[i]

A proposal to replace the existing primary laws in the telecommunications (**telecom**) sector with a forward-looking law was first suggested as far back as 1999.[ii] Even using this yardstick, this initiative of the DOT has perhaps been long overdue. These primary laws, which use the language of telegraphs, can certainly benefit from a refresh in a world of next-generation networks and digitalisation.[iii]

The Paper goes beyond discussing concerns with the primary laws. Many challenges highlighted in the Paper are concerns with the vast overall telecom framework, which comprises a number of laws, rules, regulations, licenses, orders, guidelines, policies, and other instruments. We assume that the Paper focusses on modernising the overall framework and not just the primary laws.

This is a much larger exercise, with several aspects not discussed in the Paper or where they are mentioned, they may potentially merit a dedicated consultation:

(1) Topics such as spectrum management or the Universal Service Obligation Fund (**USOF**) probably merit dedicated consultation by themselves.

(2) Issues relating to insolvency or mergers and acquisitions, are currently dealt with under other horizontal laws. For example, the Insolvency and Bankruptcy Act, 2016 (**IBC**) was amended in 2020 to deal with the continuity of licenses during insolvency. The specific gap that is to be addressed over and above the IBC via a sectoral law and the desired interplay between the two legislations is not discussed in the Paper.[iv]

(3) Some additional areas not discussed right now merit consideration as well, such as potential reforms to the parent law for the Telecom Regulatory Authority of India (**TRAI**).[v]

(4) The Government is also presently considering another law, the Digital India Act, that may replace the Information Technology Act of 2000 (**IT Act**) which also applies to this sector's participants.[vi] A new telecom law and a Digital India Act would need to be considered together to understand the overall regulatory framework of the future. However, at present, the interplay between these two proposed legislations is not under discussion.

Recommendation 1: The DOT should follow up this Paper with a detailed consultation paper and a consultation process that adopts the process of the TRAI.

Modernising the overall framework is a large exercise (for an example from another jurisdiction, see *Figure 1*). This Paper has ensured that stakeholders have started thinking about this exercise. However, since it is quite "high-level", stakeholders are faced with uncertainty on the intended outcome and the level of feedback being sought. As noted above, there is scope for delving into the details.

Figure 1: Strategic Review of Telecommunications in the United Kingdom (UK)

In 2003, since it had been 20 years since the privatisation of the telecom sector in the UK, the Office of Communications (**Ofcom**) decided to comprehensively review the telecom regulatory framework. They followed a two-stage consultation process that took over 1 year to complete.

- Phase 1 (from April 28th to June 22nd, 2004) explored the workings of the sector, the benefits being delivered to consumers its future prospects and the potential impact of alternative regulatory approaches.
- Phase 2 (from November 16th to February 3rd, 2005) focused on more concrete proposals for a future regulatory strategy. Post this, the Ofcom released final statements and proposed changes to the law.[vii]

To ensure a participative process, comply with existing norms on pre-legislative scrutiny[viii], and receive detailed, relevant, and targeted feedback, we recommend following up this Paper with a detailed consultation process. The TRAI's approach to consultations is considered a best practice in India today.[ix] We recommend, accordingly, adopting the following approach:

1. The feedback received on this high-level Paper may be released to the public.
2. That feedback may be used to frame a more detailed consultation paper discussing the objects and reasons of the new law, the interplay with current or future legislation and posing specific questions or policy options for stakeholders.
3. Stakeholders' answers to the more detailed paper be made public and an opportunity for counter-comments be provided.
4. A final report may be released with decisions taken. This may be accompanied with a draft law or draft laws for a second round of public consultation.
5. After incorporating accepted changes suggested by stakeholders, the new legal framework may be finalised.

3 Desired outcomes from a new telecom framework

At this stage, since there is no formal draft law to comment upon, instead of outlining detailed and granular legislative proposals, we outline below specific desired outcomes that, in our view, should be achieved from a modernisation of the telecom regulatory framework. In summary, we focus on the following:

1. Ensure the new telecom law has a clear scope informed by a layered approach.
2. Simplify the licensing regime by introducing a risk-and activity-based approach.
3. Periodically reassess/review regulations for reducing regulatory burdens.
4. Modernise spectrum management through a principles-based legal framework.
5. Catalyse investment through ease of doing business reforms.

6. Enable security standards that are harmonised and interoperable with global standards.
7. Ensure the interception of communications is compatible with the right to privacy.
8. Introduce a performance assessment framework for the USOF or its future iteration.
9. Clarity the institutional relationships and interactions between telecom regulators.
10. Formalise regulatory governance in telecom regulation.

4 The overall scope and objectives of a framework

Recommendation 2: The scope of the new framework should be limited to the operation of telecom facilities & systems and the provision of telecom services. These should be defined using the layered approach to regulation.

It will be important for the new framework to have clarity of scope and purpose. This is to avoid over-regulating entities. At a high-level, the scope should be limited to operating telecom facilities, (such as infrastructure), systems (such as network equipment) and services (that involve transmission, emission, or reception by electromagnetic means).

These concepts should then be nuanced and applied by explicitly recognising and differentiating between the four layers recognised in the National Digital Communications Policy of 2018 (**NDCP 2018**): (a) the infrastructure layer (b) the network layer (b) the services layer and (c) the applications layer.[x] Each of these layers must be viewed separately and comprising of services that may be provided by multiple separate competing businesses.

It is important to note that a layered approach is not new to the current regime. Beyond being recognized in the NDCP 2018, the differentiation between layers is also recognized in the current licensing and authorization framework under the Unified License or under other licenses - such as differentiating between infrastructure and service providers.

5 The licensing regime

As recognised in the Paper and by the NDCP 2018, there is a clear need to simplify the existing licensing regime towards reducing entry barriers, complexity, compliance burdens, and administrative overhead.

Recommendation 3: Shift away from licensing individual service providers by default and introduce a risk-based approach to licensing & regulation.

Currently, the Indian telecom sector is defined by the regulatory practice of issuing detailed individual licenses to service providers. Each license is defined by eligibility restrictions, revenue-sharing requirements, service-related restrictions, and security conditions.

We have seen that adapting regulation to technological change and new business models has traditionally taken place through a licensing-centric approach. Consequently, market segments have not opened up. For an example, see *Figure 2*, which discusses how the Unified License (Virtual Network Operators) **[UL(VNO)]** has seen very limited uptake due to a licensing-centric approach to defining and regulating these entities.

Figure 2: The UL (VNO) regime as a case study in licensing-centricity

Virtual network operators (**VNOs**) were a model introduced, via the UL (VNO) license, to expand competition at the distribution level and expand penetration in rural areas.[xi] VNOs do not own the underlying networks, instead relying on networks provided by internet and telecom service providers (**TSPs**) who are also licensed entities. The UL-VNO license, however, drew several clauses directly from the Unified License applicable to TSPs; as a result, several licensing obligations intended for those who owned and controlled networks were directly imposed on resellers. This imposed disproportionate burdens on VNOs and created high market entry barriers. It also duplicated compliances, since several obligations, such as those on maintaining interception infrastructure or storing subscriber data, were already being discharged by the relevant network service operator (**NSO**) under their licenses.[xii] Other restrictions, such as the 'single parenting' rule, reduced redundancy options for VNOs, reduced competition market in the wholesale market for network access, and negatively impacted innovation and quality of service at the VNO level.[xiii] Penalties in the UL(VNO) license also exposed VNOs to being penalised for violations concerning network operations (which were beyond their control). This has created regulatory risk.

This is a problem of path dependency, where current and future policies are shaped by past actions and decisions.[xiv] This creates market entry barriers. Instead, we must create a regulatory architecture which can adapt to the evolving business models in a technology-neutral manner. For example, today, network technologies have converged at the infrastructural level, as also recognised in the NDCP 2018. As we discuss in *Figure 3*, this has not been reflected in current regulation that continues to differentiate between different network technologies.

Figure 3: IP-PSTN switching as a study in the need for technology-neutrality

Today, it is possible for voice services in most jurisdictions on PSTN and IP networks to be interconnected and integrated. However, under the Indian licensing regime, this is not permitted. To some extent, internet telephony has been permitted for internet service providers; however, interconnection with the PSTN networks is not allowed. Only TSPs are permitted to provide IP-PSTN network interconnection. In 2008, TRAI had recommended that ISPs may be permitted to provide internet telephony calls to PSTN/PLMN and vice-versa. This was not accepted. TRAI reiterated the importance of enabling IP-PSTN switching in 2017. [xv] The NDCP 2018 also specifically noted the importance of enabling infrastructure convergence by permitting IP-PSTN switching.[xvi] This is also in line with the strategy in the NDCP 2018 to unbundle the network and service layers.[xvii]

As another example, today, since the activity of "resale" is not defined, the concept of "reselling" telecom services is only permissible if a reseller gets a UL(VNO) license. This means that enterprises seeking to provide value-added services atop telecom services must get a UL(VNO) license to operate and potentially subject themselves to a range of disproportionate obligations or face regulatory uncertainty.

This curbs both the growth of the resale market and new business models. As an illustration of why a more flexible approach is needed, see *Figure 4*, which discusses how the market for Hosted Contact Centre Service Providers (**HCCSPs**) have been held back because the activity they perform has not been accurately defined.

Figure 4: HCCSPs as a case study for shifting away from licensing-centricity

HCCSPs provide value-added services on top of access services. Examples of their services include call handling, call recording, contact centre data analytics, interactive voice response, etc.[xviii] The TRAI has recently recommended including such services under the UL(VNO) license. Apart from exposing HCCSPs to the challenges posed by the UL (VNO) license (see Figure 2 above), this also risks imposing disproportionate burdens on HCCSPs.[xix] This has the unintended effect of creating avoidable entry barriers and disincentives to entrepreneurs, start-ups and small enterprises looking to create innovative solutions in this space.

We believe that, instead of continuing licensing by default, a new telecom law should enable a risk-based approach to regulating the sector. This is an approach that focuses on targeting obligations in a proportional manner, imposing the highest burdens on those activities and entities that pose the highest risk to public and, in turn, lowering burdens for lower-risk activities and entities.[xx] To illustrate such a risk-based approach, consider:

1. Licensing should only be necessary to manage use of finite public resources such as radiocommunications spectrum (**spectrum**). Thus, licenses would be the exception.
2. The default would be to frame certain "General Conditions of Entitlement" which would define classes of activities or services (as needed) and obligations for each class. We borrow the term and concept from Ofcom.[xxi]
3. Such general conditions would be the norm. Market entrants and operators would be expected to self-assess and comply with the applicable obligations to their class. Ofcom defines three types of general conditions: network functioning obligations; numbering and other technical conditions and consumer protection conditions.
4. A set of rules may be defined for regulators to impose additional specific obligations, such as registration requirements or security conditions, on entities that cross certain risk thresholds. So, for example, entities critical from a national security perspective or operating at a significant scale, could be required to meet additional conditions.

The above illustration draws from existing regimes in the European Union (**EU**)[xxii] and the UK.[xxiii] If we were to apply the above approach to India, then, for example, it would be possible to delicense certain categories, such as VNOs, clear up regulatory uncertainty around certain business models, such as HCCSPs, and instead define general conditions for the activity of resale. This would both open up the resale market and reduce duplication of regulatory obligations. It would also reduce administrative overhead since individual licenses for VNOs would not have to be processed.

It is important to note that a risk-based approach should flow both away - it should define both high-risk and low-risk activities. Further, when using such an approach to impose obligations proportionately, it would be necessary to ensure that the interplay with other legal regimes is also considered. For example, operators of telecom infrastructure may also be subject to stringent security requirements as operators of critical information infrastructure. Similarly, all TSPs and ISPs are exposed to regulation as "intermediaries" under the current IT Act. [xxiv] Thus, a new primary law should avoid overlaps with such regimes and recognises that, sometimes, additional legal obligations may not be required as they would be flowing from other regimes.

6 Periodic assessment of regulations

Recommendation 4: Introduce a mechanism in the primary law requiring the periodic review and assessment of licensing & regulation.

We, also recommend, that to ensure the proposed legal framework promotes efficiency in the market, it must cast an obligation on the regulators to periodically review the regulatory burdens in light of the regulatory risks. As discussed earlier, the regulatory requirements need to sync with the changes in technology and business models. One such illustration of a case study of the costs associated with the lack of a review mechanism could be the case of the Other Service Providers (OSPs) (see *Figure 5*).

Figure 5: The OSP regime as a case study in the need for periodic assessment of regulation

The initial regulatory intent of introducing OSP guidelines, going back to the National Telecom Policy in 1999, was to create an environment conducive for the growth of the ITES. However, this incrementally evolved into a regulatory regime with disproportionate obligations and redundant compliances. Eventually, in 2020 and 2021, the Government simplified the regime, when the need to do so become critical on account of the need to ease remote working norms during the Covid-19 pandemic. Even today, there is scope for regular review of the regulatory regime. For instance, OSPs are required to preserve call detail records for all the voice traffic carried using the EPABC and to be segregated for each media gateway.[xxv]

7 Spectrum management

We welcome the proposal in the Paper to introduce a legal framework for spectrum management. We offer below specific design points for such a framework.

Recommendation 5: Modernise spectrum management by incorporating the recommendations of the Comptroller and Auditor General of India (CAG) and establishing a principles-based legal framework

We also note that, recently, the CAG has released a series of recommendations on the current regulatory practices followed by the DOT vis-à-vis spectrum management.[xxvi] Any future legal framework for spectrum management may ensure that the CAG's recommendations are incorporated into the final design. Some relevant recommendations from this perspective include:

1. *Creation of a statutory body:* As per the CAG report, effective spectrum management requires establishing a central body that undertakes the functions of spectrum planning, availability, allotments/ assignments, pricing, and coordination with users. Such a body must also be required to maintain an automated spectrum management system (**ASMS**) to facilitate national spectrum management, monitoring, coordination among administrations, exchange of information with the Radiocommunication Bureau and maintain an accurate and reliable spectrum database on the allocated bands /frequencies and wireless licenses.[xxvii]
2. *Future looking:* Spectrum planning must satisfy the resource availability for current demands and anticipate future demand. Further, several factors such as technological developments, flexibility, innovation, market fluctuations, user needs, technological neutrality, and public policy considerations, should be holistically considered.
3. *Spectrum repurposing and refarming:* To maximize the use of spectrum and thereby better address spectrum demand, proposed framework must allow for spectrum repurposing and re-farming of under-utilized spectrum held by various government departments. For instance, in the United States, the National Telecommunications and Information Agency is tasked with the role of facilitating transfers of spectrum allotted to the government departments, such as the defence and air traffic control, to private sectors to build mobile network.[xxviii]

Any future framework should be aligned with principles drawn from global best practice. For example, drawing from similar frameworks in the United States[xxix] or in Australia,[xxx] the following principles would be relevant:

1. *Market based pricing:* While spectrum valuation is a complex exercise involving different methodologies, the framework must ensure a market-based approach and transparent mechanism. For instance, auction of spectrum is a globally accepted practice which helps in price discovery in a transparent and competitive manner.[xxxi]
2. *Liberalisation in the public interest:* A progressive spectrum management framework offers a scope for unlicensed spectrum bands which can generate wide economic benefits to the society. For instance, Wi-Fi and IoT applications often operate in licence-exempt bands. Countries like U.S., U.K., South Korea, Japan, Russia, Australia have either adopted license free framework or light touch regulation for releasing E-band and V-band.[xxxii] In 2014, TRAI had recommended opening up the E and V bands on a light touch regulation framework.[xxxiii] Further, liberalisation of spectrum would align with the aim of NDCP 2018.
3. *Certainty:* This provides a stable and predictable regulatory arrangement and maximises public benefit by reducing risks of market failure from risk aversion. For

instance, Ofcom releases an annual plan setting out key spectrum related work areas for each year.[xxiv]

4. *Flexibility*: The framework must allow for the evolution of services and technologies. For instance, the framework should be technology neutral, where it considers the new technologies and applications while looking at the future of spectrum management plans. Also, it must facilitate timely introduction of appropriate new applications and technology while protecting existing services from harmful interference.

8 Ease of doing business

The Paper generally recognises the need for a simplification of the regulatory framework. We believe that there is scope for this exercise to be leveraged to introduce several ease of doing business (**EODB**) reforms. We highlight key recommendations from this perspective below.

Recommendation 6: Open markets by recognising 'one India, one circle' across the board

We note that there is a need to shift away from certain legacy approaches that emanate back to a time when the telecom sector comprised only of one government service provider and one service. A prime example of a legacy construct which is no longer relevant today is the concept of telecom "circles". Given the technological innovations which cut across geographical boundaries, demarcating operations into territories like SDCA/LSA/NLD etc. hampers the ease of doing business.

Recommendation 7: Rationalise existing license conditions that serve as barriers to market entry.

Similar to the license regime, there is a need to rationalise the guidelines which impede the growth of new business models or force entities to continue businesses in an inefficient manner. As an illustration, see *Figure 6,* which discusses how the prohibition on data centres to buy or lease dark fibre holds back the growth of the data centre ecosystem in India.

Figure 6: The prohibition on captive use of dark fibres for data centres as a case study for need of a framework which is geared to ease operational difficulties

With the growing need of data repository and infrastructure, enterprises in India are looking for third party data centres. These data centres could be located outside the premises of the enterprises. To provide fibre connectivity across locations, data centres prefer connectivity through dark fibre over other forms of transmission (like broadband cables) since they provide high availability, bandwidth, and low latency for extremely high amounts of data quality. However, today, infrastructure service providers cannot supply dark fibre to non-licensed enterprises, like a data centre.[xxxv] Consequently, data centre operators depend on TSPs for connectivity requirements, forcing them to use networks designed primarily for voice or public data services and not for carrying high volumes of data with low latency and quality.

As noted in a recent TRAI consultation paper,[xxxvi] the DOT has, in recent years, rationalised entry fees and bank guarantee requirements across the board. However, as part of the larger reform of shifting away from licensing by default, we submit that licenses or other requirements applicable to individual entities (e.g., authorisation or registration requirements) should not contain entry fee or bank guarantee conditions across the board. These create unnecessary costs and market entry-barriers, especially since entry fees are non-refundable while bank guarantees force market participants to block valuable capital.

Recommendation 8: Establish formal timelines for approvals and permissions.

The NDCP, 2018 has recognised the need for having well-defined timelines and transparent processes for all approvals and permissions in the telecom sector.[xxxvii] Implementing these strategies would be an essential reform across the board. To do so, a formal obligation may be introduced in the primary law requiring fixed and reasonable turnaround times and transparency requirements to be set for regulatory processes. These may then be translated into current and proposed regulatory practices. For example:

1. This would translate to an obligation to ensure clear timelines are defined for any future licenses or administrative processes that will be operationalised in the sector.
2. This would translate to an obligation on DOT to provide stage-wise status updates on applications on the DOT's dedicated portal for submitting applications.[xxxviii]
3. This would require the DOT to define clear timelines for granting approvals for "trusted sources" and "trusted products" basis the lists that are to be defined by the government pursuant to the National Security Directives on the Telecommunication Sector.[xxxix]

9 Security standards

The Paper notes that the new framework must have appropriate provisions for addressing situations of public emergency, public safety and for taking measures in the interest of national security. It also states that the Central Government should be enabled to prescribe relevant standards for telecom equipment, services, networks, and infrastructure.

Recommendation 9: The security duties of participants in the telecom ecosystem should be clearly defined and be accompanied with a grievance redress mechanism.

Any new legal framework for security standards should ensure that security obligations are well-defined and risk-based to ensure that different regulated entities in the sector are regulated proportionate to their risk and are able to understand and comply with their respective requirement with certainty. We note that international reference points may be examined to design such obligations, such as recent legislation on telecom security introduced in the UK.[xl] .

Recommendation 10. New security and safety standards for the telecom ecosystem should be compatible with global standards.

At present, the Government of India has been simultaneously driving initiatives aimed at building domestic testing and certification of telecom equipment[xli] as well as different initiatives to promote domestic manufacturing in the context of telecommunications.[xlii] However, today, the Indian manufacturing industry does not rank highly on innovation indexes and is seen as operating on the lower end of global value chains.[xliii] Given this market reality, security standards introduced under any future law, if focused on creating India-only standards, may prevent domestic companies from entering into higher value addition roles in global supply chains. We recommend that India must ensure its own safety and security standards in harmony with the global standards. This principle must be captured in the new framework.

10 The right to privacy

Recommendation 11: Align the framework for interception with the fundamental right to privacy.

Recent advancements in privacy jurisprudence in India[xliv] have made it necessary to ensure that the fundamental right to privacy is respected throughout the legal system. Due to these advancements, the current framework for telecom regulation may need to be re-evaluated to ensure their compatibility with current constitutional standards. In particular, a dedicated study would be required to ensure that the overall regime for interception and monitoring can be modernised and aligned with constitutional standards. We also note that this regime should be modernised to build privacy interoperability with other jurisdictions.

In a recent study evaluating gaps in current interception and monitoring frameworks that impact cross-border data transfers, we found that a key concern is the lack of any independent oversight mechanism - the framing of a new telecom law affords an opportunity to introduce such a high impact reform.[xlv] Other key safeguards include ensuring that a just, fair, reasonable, and proportionate procedure should be introduced to govern requests for interception and monitoring. Finally, to ensure proportionality and to reduce the possibility of network-level vulnerabilities, the new framework should clarify that interception does not take place at a network level and instead is limited to end-point interceptions.

11 Universal Service Obligation Fund

Recommendation 12: Introduce a performance assessment system to ensure funds are used transparently, timely and to achieve measurable outcomes.

The Paper mentions that the new framework should consider ways to overhaul the existing USOF[xlvi], to expand its scope and replace it with a Telecommunication Development Fund **(TDF)**. The framing of a new telecom law allows for the introduction of a performance assessment system for the TDF. Such a system should be based on an assessment of the challenges of the current USOF to inform the design of the new fund. For example, studies indicate that only half of the funds disbursed so far have been used for enabling connectivity in rural India.[xlvii] The recent CAG report also notes that the transfer of Universal Access Levy **(UAL)** to the USOF was on lower side with reference to the actual receipts in the last 5 years.[xlviii] To address such challenges, the new framework should lay down clear requirements to ensure funds are disbursed in a timely manner and that the USOF Authority prescribes measurable objectives so that their effectiveness can be ascertained against specified parameters.[xlix] The framework should require and enable ongoing impact assessment studies to ensure the target objectives are met.

12 Institutional relationships

Recommendation 13: The existing institutional arrangements between telecom regulators should be re-examined and aligned with international best practices.

In India, the regulatory arrangement for the telecom sector is unique, where it is co-regulated by both an executive arm of the government **(DOT)** and a statutory regulatory authority **(TRAI)**.

Despite being formally designated as the regulator for the telecom sector, since its inception, the regulatory remit of the TRAI has been limited to specific areas, such as establishing standards for quality of service or ensuring effective interconnection, while key activities in the sector, such as spectrum allocation, licensing, regulatory obligations and enforcement, are vested with the DOT. Further, under the TRAI Act, the TRAI can make recommendations to the DOT, but it is the discretion of the DOT to accept or reject those recommendations without any corresponding obligation to provide reasons for its decision.

The above design is out of sync with global best practices. In most jurisdictions, the majority of regulatory functions in the telecom sector are discharged by a single independent regulator.[l] The current design creates regulatory uncertainty in the sector - especially if TRAI's recommendations, on which entities rely on to decide investments and business models, are not accepted by the DOT; or if the TRAI and DOT disagree on policy positions.

Accordingly, to align with global best practice, the formulation of a new legal framework should enable:

1. Reorganisation of subjects to establish the TRAI as a more effective independent sectoral regulator.
2. In such a framework, the role of the DOT should concentrate on the framing of policies, such as future iterations of the NDCP 2018, and on the formulation of rules on various subjects.
3. Regulation-making, supervision, and enforcement would be the primary prerogative of the TRAI.
4. TRAI should have the requisite enforcement and penal powers to monitor the performance of regulated entities.

13 Regulatory governance

Recommendation 14: The new framework should formalize regulatory governance.

The formulation of a new primary law affords an opportunity to address several regulatory practices of concern:

1. The various national telecom policies that have been issued from time to time have often recognised several forward-looking strategies. Traditionally, it has been difficult to determine and measure progress and outcomes. There is no mechanism to recognise lack of implementation and to fix accountability for the same.
2. The sector is regulated through a wide range of instruments. Unlike rules and regulations, several instruments, such as guidelines and orders, routinely issued by different divisions of the DOT are not backed by the statute.
3. The primary laws do not contain guardrails on how different regulatory bodies go about supervision and enforcement, such as the imposition of penalties or the processes of issuing licenses or standards.
4. Formally, the TRAI is not legally bound to conduct public consultations. It may be said that public consultations and the manner thereof are integral to TRAI's function because it chooses to do so. It is generally required to ensure "transparency" in its functioning.[5]

Given these concerns, the new primary law can allow for a regulatory governance framework to be set up, which can include:

1. A duty to conduct public consultations, provide responses on stakeholders' comments and provide reasoned explanations of decisions taken. This should be introduced across the board - including to require the DOT to publish its reasoned decisions and responses to recommendations provided by the TRAI.
2. The TRAI could be afforded with a function of providing informal guidance, so that they can play a role in the telecom sector similar to that of the Authority of Advance Ruling (**AAR**) under the Central Goods and Services Tax Act, 2017 (**CGST Act**). This

would allow the TRAI to provide clarifications in the telecom sector which can provide certainty to all stakeholders (including users, consumers, or service providers).

3. A mechanism may be introduced to ensure timely implementation of the national telecom policies issued from time to time, and which allows tracking their progress and outcomes, and holding parties accountable for implementation.
4. Primary laws and other instruments must be consolidated and 'as amended' version must be published on the website in a timely manner in multiple formats for easy access and use. All issued instruments must be listed in a structured manner for ease of reference.

We also recommend that any future framework on regulatory governance for the telecom sector must consider the recommendations on regulatory governance proposed by the Financial Sector Legislative Reforms Commission (**FSLRC**).[lii]

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We hope the above submissions can help in formulating an effective telecom legal framework for the future of the sector in India. We look forward to continuing to engage with the DOT on this important topic. For any queries related to this submission, please contact:

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About NASSCOM

The National Association of Software and Services Companies (**NASSCOM**) is the premier trade body and chamber of commerce of the Tech industry in India and comprises over 3000 member companies including both Indian and multinational organisations that have a presence in India. Established in 1988, NASSCOM helps the technology products and services industry in India to be trustworthy and innovative across the globe. Our membership spans across the entire spectrum of the industry from start-ups to multinationals and from products to services, Global Service Centres to Engineering firms. Guided by India's vision to become a leading digital economy globally, NASSCOM focuses on accelerating the pace of transformation of the industry to emerge as the preferred enablers for global digital transformation. For more details, kindly visit www.nasscom.in

About DSCI

The Data Security Council of India (**DSCI**) is a premier industry body on data protection in India, setup by NASSCOM®, committed to making the cyberspace safe, secure and trusted by establishing best practices, standards and initiatives in cyber security and privacy. DSCI brings together governments and their agencies, industry sectors including ITBPM, BFSI, telecom, industry associations, data protection authorities and think-tanks for policy advocacy, thought leadership, capacity building and outreach initiatives. For more info, please visit www.dsci.in

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[i] *See* DOT, *Consultation Paper on - Need for a new legal framework governing Telecommunication in India*, (2022).

[ii] *See* DOT, *National Telecom Policy of 1999*, (1999).

[iii] Here, by primary laws, we refer to the three laws mentioned in the Paper: The Indian Telegraph Act, 1885 (**Telegraph Act**); The Indian Wireless Telegraphy Act, 1933 (**Wireless Telegraphy Act**); and The Telegraph Wires (Unlawful Possession) Act, 1950 (**Telegraph Wires Act**).

[iv] *See*, the Explanation to Section 14(1)(d) of the IBC.

[v] *Namely*, the Telecom Regulatory Authority of India, 1997 (**TRAI Act**).

[vi] The IT Act regulates "intermediaries", a concept that includes telecom and internet service providers. *See* Section 2(1)(w), the IT Act. On the Digital India Act, *see*, V. George, Y. Bhargava, *Data Protection Bill likely in Budget Session*, THE HINDU, (2022).

[vii] *See*, Ofcom, the Strategic Review of Telecommunications - *Phase I*, *Phase II*, and *Final Statements*, (2003).

[viii] *See* Ministry of Law & Justice, *The Pre-legislative Consultation Policy (PLCP)*, (2014).

[ix] *See*, A. Burman, B. Zaveri, *Regulatory responsiveness in India: a normative and empirical framework for assessment*, WILLIAM & MARY POLICY REVIEW, Vol.9, No. 2, (2018).

[x] *See* DOT, *National Digital Communications Policy*, Paragraph 2.1 (b)(v), (2018) (**NDCP 2018**).

[xi] *See*, TRAI, *Consultation Paper on 'Delinking of the license for networks from delivery of services by way of Virtual Network Operators'*, (2018).

[xii] See, DOT, License Agreement for Unified License for Virtual Network Operator, (2016); DOT, Guidelines for Grant of Unified License (Virtual Network Operators), Para 4(1)(xxiii), (2018).

[xiii] *Ibid*.

[xiv] A useful parallel discussion on path dependency versus risk-based approaches, arising out of a different but connected context of 5G infrastructure, policy, is found in R. Radu, C. Amon, *The governance of 5G infrastructure: between path dependency and risk-based approaches*, JOURNAL OF CYBERSECURITY, Vol. 7, Issue 1, (2022).

[xv] See TRAI, *Recommendations on Regulatory Framework for Internet Telephony*, (2017).

[xvi] *See* Paragraph 1.1(g)(iv), NDCP 2018.

[xvii] *See* Paragraph 2.1(b)(iv), NDCP 2018.

[xviii] *See*, TRAI, *Recommendations on Application Services*, (2012).

[xix] *See*, TRAI, *Recommendations on Review of Terms and Conditions for registration of Other Service Providers (OSPs)*, (2018)

[xx] *See*, OECD, *Regulatory Policy Outlook 2021 – Chapter 6 on Risk-based Regulation*, (2021).

[xxi] *See*, Ofcom, *General Conditions of Entitlement*, (2022).

[xxii] *See*, European Commission, European Electronic Communications Code, (2018).

[xxiii] See, the Communications Act of 2003 as updated to reflect the European Electronic Communications Code of 2018, available at: Ofcom, *General Conditions of Entitlement*, OFCOM, (2022).

[xxiv] *See*, the regime applicable to critical information infrastructure under Section 70 & 70A, and the regime applicable to intermediaries under section 79, the Information Technology Act of 2000. As per the National Critical Information Infrastructure Protection Centre, the telecom sector is a critical sector, and it is possible to impose several cybersecurity requirements on entities designated as owners of protected systems.

[xxv] See, DOT, *Revised Guidelines for Other Service Providers (OSPs)*, Chapter 5, (2021). https://dot.gov.in/sites/default/files/2020_11_05_OSP_CS.pdf

[xxvi] See, Comptroller and Auditor General of India, *Performance Audit Report on Management of Spectrum Presented in Parliament*, (2022).

[xxvii] *Ibid*.

[xxviii] In the U.S., the National Telecommunications and Information Agency is tasked with the role of facilitating transfers of spectrum allotted to the government departments, such as the defence and air traffic control, to private sectors to build mobile network. See, US Govt. Accountability Office, *Spectrum Management: NTIA Should Improve Spectrum Reallocation Planning and Assess its Workforce*, (2022).

[xxix] *See*, FCC, *Best Practices for National Spectrum Management*, (2020).

[xxx] *See*, ACMA, *Principles of Spectrum Management*, (2019).

[xxxi] *See*, GSMA, *Introducing Spectrum Management*, (2017).

[xxxii] See, Rai et al, *The Economics of Releasing the V-band and E-band Spectrum in India*, NIPFP Working Paper No 226, (2018).

[xxxiii] See, TRAI, *Recommendations on Allocation and Pricing of Microwave Access and Microwave Backbone RF carriers*, (2014).

[xxxiv] See, Ofcom, *Spectrum Roadmap*,v (2022).

[xxxv] The present terms and conditions contained in the Guidelines for Infrastructure Service Providers prohibit entities holding an IP-1 registration from providing dark fibre to unlicensed entities. *See*, DOT, *Revised Guidelines for Registration of Infrastructure Providers*, (2021)

[xxxvi] *See*, TRAI, *Consultation Paper on Rationalisation of Entry Fees and Bank Guarantees*, (2022).

[xxxvii] *See*, DOT, *National Digital Communication Policy*, Section 2(C)(ii) & (iii), (2018).

[xxxviii] See, DOT, Saral Sanchar Portal.

[xxxix] *See*, National Security Council Secretariat, *Launch of the Trusted Telecom Portal*, (2021).

[xl] *See*, Government of UK, Telecommunications (Security) Act, (2021).

[xli] Currently, every telecom equipment has to undergo mandatory testing and certification prior to sale, import or use in India. See, Indian Telegraph (Amendment) Rules, 2017. Further, telecom equipment must also meet certain safety, technical and security requirements. *See* TEC, the Procedure for Mandatory Testing and Certification of Telecommunications, (2018).

[xlii] *See*, MEITY, *Production Linked Incentive Scheme for Large Scale Electronics Manufacturing*, (2021).

[xliii] India recently secured a rank of 46 out of 132 on the Global Innovation Index, 2021. *See*, WIPO, *Global Innovation Index of 2021*, (2021).

[xliv] See, Justice K.S. Puttaswamy (Retd.) and another vs. Union of India, (2017) 10 SCC 1.

[xlv] *See*, NASSCOM, *Implication of Schrems II on EU-India Data Transfers*,(2021).

[xlvi] See, Sections 9A & 9B, Telegraph Act.

[xlvii] Currently, the total accretion is Rs. 127804.88 crore; total disbursement is Rs. 68069.91 crore; available funds are Rs.59734.97 crore. See, USOF, *Statement showing the balance of UAL amount available as potential fund under USO as on 30.06.2022*, (2022)

[xlviii] See, Report of the Comptroller and Auditor General of India, *Report for the year ended March 31st, 2021 (Report No. 15 of 2022)*.

[xlix] See, International Telecommunications Union, Universal Service Fund and Digital Inclusion for All, (2013).

[l] *See*, for e.g., the Federal Communications Commission in the U.S, Office of Communications in the U.K, Infocomm Media Development Authority in Singapore, Australian Communications and Media Authority, Independent Communications Authority of South Africa, Korean Communications Commission in South Korea

[li] See, Section 11(4), TRAI Act.

[lii] See, FSLRC, *Report of the Financial Sector Legislative Reforms Commission*, (2014).

CII

Confederation of Indian Industry

CII Submission: Consultation Paper on Need for Legal Framework Governing the Telecom Sector

1-September-2022

Background

1. Telecom industry has put in substantial investments and all future generations of technologies and spectrum require continuous investment. Therefore, a holistic legal framework that reflects the changing digital landscape while reducing costs and barriers to network creation, deployment and expansion will deliver the best outcome for both the economy and society at large.

2. DoT Consultation rightly notes many leading Telecommunications markets like the UK, Australia and the US have all continuously evolved and reformed their Telecom Acts in last 2-3 decades. The Right time as a spring board to next level of growth & we look at India @ 100

3. Law must cover existing developments in technologies & services and encompass the below to come up with a light touch, future fit legal framework that:
    a. The available spectrum should be able to serve the future demand for connectivity at an affordable rate
    b. Attracts & protects investment in high-speed broadband networks. Ensure long term sustainability of the industry to build and invest in network infrastructure
    c. Law should be future proof, bring regulatory certainty and be applied prospectively
    d. Provide an effective framework for expeditious rollout and deployment of networks
    e. Align with global best practices and the best global regulatory regimes
        i. Ensures effective protection of consumers
        ii. Ensures a level playing field for all market players
        iii. Promote use of industry 'self-regulation'
        iv. Provides for consistent application of the rules
        v. Take note of and address convergence in technologies
        vi. Regulatory impact assessment (RIA) before and for every regulatory intervention should be included
    f. Provide a framework for contemporary regulatory challenges:
        i. No undue financial and administrative burdens on industry - prescribe that a regulatory levy/fee must recover only the cost of administering resource / asset;
        ii. The USO Levy should be phased out
        iii. Comprehensively review penalty regime
        iv. Implement RoW in letter and spirit
        v. Cost of interception & security requirements should be shared between the TSPs and LEA/User departments
        vi. Temporary shutdowns – refine the SoP with central government as single authority
        vii. Possession of illegal SIM boxes/repeaters/jammers be non bailable cognizable offence
        viii. M&A– simplify, streamline and work in tandem with NCLT proceedings

g. While we give our inputs on the consultation, we request that a draft of the proposed legislation be put out for public consultation so that stakeholders are able to respond comprehensively to the proposed new legal framework.

Our inputs on various aspects of the consultation paper are as follows:

Simplification of the Regulatory framework

We welcome this initiative and believe that a simple future fit regulatory framework

1. It should be light touch for all players equally
2. It should encompass all communication services – ensuring level playing field for all market players
3. It should adopt a technology neutral approach
4. It should encourage innovation
5. It should encourage and protect investments
6. It should not be high cost – sector specific levies should be reduced and recover only the cost of administration / administering the natural resource/asset/activity
7. Government supply of services should not attract GST
8. A comprehensive legal framework aiming the development of converged law, should be jointly developed through coordination and cooperation between all concerned ministries (i.e. DoT, MeitY, MIB, DoS, MHA etc).
9. The new law may not be detrimental to the relevant entity but at the same time, also not dilute any obligation of any single entity in terms of payment of government dues
10. At present, products manufactured by OEMs are subject to rules and regulations issued by various departments and ministries including safety standard certifications, telecom equipment certifications, radio frequency related approvals, etc. There is a need to ensure convergence for testing and certification of devices. This can be achieved through close coordination amongst the relevant authorities (such as BIS, TEC, WPC etc).

There should also be a clear commitment in the law to reduce the litigation in the sector through devising some mechanism for providing for out of court settlement

Spectrum Management

Important principles that may be looked at in the context of spectrum management include

1. Harmonization to global standards for delivering economies of scale
2. We need to have a clear decadal roadmap for spectrum assignment and allocations, with clearly defined terms and conditions (T&Cs).
3. Technology neutral approach

Right of Way

While the government has sought to address complex and expensive RoW approvals via RoW Rules 2016 and amendments thereof, and bringing under the PM Gati Shakti plan through the Sugam Sanchar portal, on ground challenges still remains specially on charges. The DoT Consultation has stated that:

"13. To enable investments, new law should also provide framework for various players in telecom value chain like service providers, infrastructure providers, RoW providers etc..."

Therefore, the new Act should give legal backing across states to Telecom RoW permissions for laying fiber and installation of telecom towers, small cells etc. RoW charges must be consistent and commensurate only with the Administartive / restoration charges to ensure the viability and affordability of services. Since fiber connectivity needs to proliferate with greater speeds, it is also important that the decision to lay fiber is given in a time-bound manner to ensure smoth and faster 5G and wired broadband rollout.

In line with the above, the new law should ensure the following:

1. Right of Ways should be made legally enforceable
2. ROW charges on administrative / restoration costs basis to be enshrined in new law
3. Central Right of Way portal with every state integrated with it, for end to end right of way permissions
4. All Central, state and local authorities to be brought under the purview of the common law and effective co-ordination and co-operation between all these agencies to be facilitated through a robust framework
5. Electricity for telecom networks to be given at industrial rates
6. Open Access Green Electricity should be made available to the entire telecom network, including telecom towers
7. No GST on ROW permissions
8. Towers to be classified as plant and machinery
9. Common telecom infrastructure in all new buildings
10. Disruption of telecom infrastructure to be a criminal offence

Recover only the cost of administering a resource:

India's regulatory levies remain one of the highest globally. Many advanced regulatory regimes recover only the cost of administering a resource e.g. OFCOM in UK (UK Telecom Act 2003), and FCC in the USA, and Australia. Thus India's new law too should align to such global best practices.

Framework for Mergers & Acquisitions

While DoT is a part of the NCLT process and actively participates in the whole process, the applicant/petitioner companies are still required to approach DoT for approval of the demerger/merger of licences or telecom business on record. The NCLT proceedings itself take at least 8-12 months and the approval from DoT thereafter also take 2-4 months, leading to a total time frame of 10-16 months for the demerger/merger to be completed. This results in significant loss of time and value to the merging entities. Since DoT is already a part of the NCLT merger proceedings, the merging entities should not be required to approach DoT separately for its approval and the approval of DoT should be a part of the NCLT merger/demerger process and therefore all licenses and resources should be transferred without any delay to the new entity without any further application or request to DoT.

Provisions pertaining to Insolvency

1. The extant legal framework under Insolvency and Bankruptcy Code ('IBC') to be continued
2. Should not result into writing off any pending liability, more particularly any government dues, through a statutory provision
3. Any financial incentive to follow General Financial Rules 2017

Expanding Scope of USOF

1. Industry has been the sole contributor to USO Fund & can take pride in the achievements. Further, time has come to end the USO levy since private sector has been instrumental in achieving the objectives of rural connectivity over the years by constantly rolling out telecom networks in rural and unconnected areas. While USO collection has increased, the disbursement has remained low, leading to substantial unutilised accumulated surplus in the Fund.
2. However, if it is decided to continue with the USO levy, then the new Act should expand the contributing entities to include other beneficiaries of the digital ecosystem
3. Therefore, the new law should either abolish or freeze the levy for the next few years until the current available funds are exhausted effectively. It can then be restarted with a significantly lower rate to recover only the cost of administering the project and with increased number of contributing entities
4. Research and development of new technologies, and promotion of employment and training activities are activities unrelated to the objectives of the Fund and may be met by the Government through other means

Regulatory Impact Assessment (RIA)

India should adopt best practices around regulatory impact assessment or RIA as followed by world's leading regulators e.g. OFCOM in UK.

1. All policy, and regulatory decisions and interventions should be based on RIA and the RIA must be made part under the new law.

Review of Penalties Framework and other charges

1. In the absence explicit guidelines, a maximum penalty amount (Rs. 50Cr) is often imposed even for the minor of deviations. The new law should enable penalty provisions that should commensurate with the violation and be proportionate.

2. There is also a need to reduce the amount of litigation in the sector – a resolution mechanism for allowing for out of court settlement may be incorporated in the new law.
3. Other benefits, such as charging a lower rate of physical inspections of the imported/exported goods, faster release of shipments, may be considered to

encourage applicants to meet the compliance criteria and demonstrate the security of the supply chain.

Standards, Public Safety & National Security

1. Harmonization with global standards is key for ensuring inter-operability and achieving economies of scale
2. India standards must also be put through the global process so that they can be internationally adopted
3. National security is of prime importance and must be ensured. Thought may be given to reducing overlapping requirements – that lead to duplication of efforts and costs – security processes may be streamlined

   The new Act should put in place a cost-sharing mechanism between TSPs and LEA/user government departments. Such an approach is followed in other jurisdictions as well e.g. Australia, United Kingdom. Costs of security above a certain threshold level may be borne by the Government – in case any outcomes are sought to be expedited.
4. Temporary stopping / shutdown orders in an area/district/state must be only through an SOP approved by DoT, and Telegraph being a Union subject, only the Central government should be the governing authority in this regard. The current ad-hoc requests and orders to stop internet services in an area e.g. during states' examinations causes significant inconvenience to local public at large.
5. Illegal possession and use of telegraph should be non bailable and cognizable offence
   To mitigate issues related to interference, the new Act should declare the use of illegal SIM boxes / repeaters / jammers as a non-bailable and cognisable offence. Any damage / vandalism of telegraph apparatus or site or any physical telegraph apparatus should be classified as a non-bailable and cognisable offence.
6. Further, a provision should be proposed in the Act that any/all authorities and agencies (e.g., civil, utility) whose work may have a bearing on a Telegraph asset (e.g., Fiber/ Tower) must mandatorily give an advance notice of 30 days before commencing the work on the route so that TSPs / IP1s can make appropriate arrangements of any damage, cuts, etc. In the absence of such timely and appropriate notice, the agency/authority/entity must compensate for the damage and loss caused to the TSP and/or IP1.
7. Comprehensively cover data security policy perspective, viz. data protection, data sharing, data localization, data interoperability, creation of data sets and cooperation with Law Enforcement Agencies ('LEAs'), among others.
8. To protect national security, all modes of digital communication to be dealt with uniform regulations and there should not be any discrimination based on the underlying technology/network – with added focus on data security
9. Currently, the wide definition of 'telegraph' under the Indian Telegraph Act, 1885 brings ICT equipment and various consumer electronic products within the ambit of telecom and telecom equipment related regulations. Hence, it is recommended that the DoT in consultation with relevant stakeholders narrow down the scope and application of the relevant telecom equipment related

regulations in a way that is specifically tailored towards regulating only telecom products.

10. DoT may ensure that all organisations under its ambit, like the TEC, undertake mandatory public consultation with the relevant stakeholders before issuing any regulations.

Convergence of technologies and platforms

Due to the convergence in broadcasting, telecom and IT services, it is possible to distribute Satellite TV channels on Telecom networks or through internet platforms like OTTs. However, in case of online communications platforms there is a lack of clarity in the existing licensing conditions.

1. The new law should duly take note of such convergences and include provisions to ensure consumer interest, and ensure level playing field amongst various DPOs.
2. Furthermore, since DTH license involves a carriage of Satellite TV channels, and is issued under Section 4 of the Indian Telegraph Act, to enable synergies between both, the DTH should be brought under the Telecom ministry - consistent with the fact that regulator (TRAI) and adjudicating body (TDSAT) are also common for DTH and Telecom Sector.

Future proof new law to ensure level playing field

As technology obsolescence increases with shortening lifespan of technologies, law should be future proof to meet future requirements of rapidly changing technologies and industry dynamics including investments.

1. Need to ensure level playing field among all technologies e.g. Same Service Same Rules with respect to OTT Communication Services.
2. Current TSPs have made considerable investments based on present law, any change to a new framework should not adversely impact the existing businesses of TSPs . Hence, the new law should be applied prospectively only

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ASSOCHAM

Consultation Paper on
'Need for a new legal framework governing Telecommunication in India'

ASSOCHAM Draft Suggestions

ASSOCHAM and its Members welcome the consultation paper and believes that this is the right time given the technological changes and to springboard to next level of growth in the Telecom Sector. As the Country is celebrating the Azadi Ka Amrit Mahotsava and looking forward to India@100, ASSOCHAM believes that this is the right time for such a Consultation.

The draft Paper highlights key issues that must form part of the new law. ASSOCHAM would like to state that any new Law must cover existing developments and resultant convergence in technologies & services and encompass the to come up with a light touch, future fit legal framework that encompasses all relevant sectors including terrestrial and satellite-based communication services.

Telecom industry has put in substantial investments and all future generations of technologies and spectrum require continuous investment. Therefore, a holistic legal framework that reflects the changing Telecom landscape while reducing costs and barriers to network creation, deployment and expansion will deliver the best outcome for both the economy and society at large.

DoT Consultation rightly notes many leading Telecommunications markets like the UK, Australia and the US have all continuously evolved and reformed their Telecom Acts in last 2-3 decades

Below are the main points that ASSOCHAM would like to highlight to the Department about the new proposed law: The new law should

1. Attract and protect investment in high-speed broadband networks,
2. Support financial sustainability of the industry to build and invest in network infrastructure
3. Foster efficiency, transparency, inclusiveness and regulatory certainty
4. With technology development and convergence of technologies, it is important to have regulatory convergence for various types of broadcasting and communication networks
5. Reduce the regulatory burden on TSPs
6. Ensures a level playing field for all market players and provide for consistent application of the rules

7. Include provision for Regulatory impact assessment (RIA) before and for every regulatory intervention
8. Lay down reasonable reserve prices for spectrum.
9. Provide an effective framework for expeditious rollout and deployment of networks
10. Have proper checks and balances, not to give unbridled power to the executive and eliminate the concept of discretionary powers
11. Ensure effective protection of consumers
12. Ensure protection of national security and sovereign interests and addresses issues related to secure connectivity.
13. Provide that cost of interception & security requirements should be shared between TSPs and LEA/User departments
14. Promote use of industry 'self-regulation'
15. Lay down that there should not be any double license fee on the same revenue among the licensees.
16. Temporary shutdowns – refine the SoP with central government as single authority
17. Possession of illegal SIM boxes/repeaters/jammers be non bailable cognizable offence
18. Simplify and streamline M&A processes and work in tandem with NCLT proceedings

While we give our preliminary inputs on the consultation, we request that a draft of the proposed legislation be put out for public consultation so that stakeholders are able to respond comprehensively to the proposed new legal framework.

Simplification of the Regulatory framework.

1. We welcome this initiative and believe that the licensing regime be made light touch and future proof, which incentivises innovation and new investments into the telecom sector.
2. Licensing framework should thus be liberalized to remove unnecessary licensing or compliance burden. Globally as well, there is a move towards reducing licensing requirements and regulatory burdens in the telecom sector. The International Telecommunications Union (**ITU**) recommends that regulators reduce unnecessary regulatory burdens and minimise regulatory hurdles in the telecom sector.[1]
3. It should encourage and protect investments through delivering regulatory certainty and predictability to support national aspirations and goals.

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[1] International Telecommunications Union, Report of the Chairperson on the ITU Global Symposium for Regulators, 2004, https://www.itu.int/ITU-D/treg/Events/Seminars/GSR/GSR04/documents/ChairpersonReport.pdf, page 20.

4. It should encourage innovation and continuous upgradation of technology for providing new services and facilities
5. The legal framework should be developed in coordination and cooperation with all concerned ministries (i.e. DoT, MeitY, MIB, MHA etc).
6. It should support financial sustainability of the industry to build and invest in network infrastructure. It should recover only the cost of administering a resource. India's regulatory levies remain one of the highest globally. Many advanced regulatory regimes recover only the cost of administering a resource e.g. OFCOM in UK (UK Telecom Act 2003), and FCC in the USA, and Australia. Thus India's new law too should align to such global best practices. Sector specific levies should be reduced and recover only the administrative cost
7. A principle-based approach will simplify compliance and enable the adoption of new-age technologies such as 5G, internet of things, etc., touted to transform operations, increase automation and efficiency, and enable implementation of new products or services.
8. India should adopt best practices around Regulatory Impact Assessment (RIA) regulatory impact assessment or RIA as followed by world's leading regulators e.g. OFCOM in UK. All policy, and regulatory decisions and interventions should be based on RIA and the RIA must be made part under the new law.

Spectrum Management

1. Mobile networks resiliently absorbed the shock from the Covid-19 pandemic which has also been acknowledged and appreciated by the Government.
2. Have a clear decadal roadmap for spectrum assignment and allocations
3. Any flexibility to the Government for spectrum usage should be accompanied by necessary safeguards.
4. There should be no need for any statutory permission for sharing, trading or leasing of the spectrum.
5. All spectrum reform measures to be applicable prospectively to all spectrum holdings.

Right of Way

1. Right of Ways should be made legally enforceable
2. The law should ensure non-discriminatory and non-exclusive access is provided to all the telecom players
3. ROW charges on restoration costs basis to be enshrined in new law
4. Central Right of Way portal with every state integrated with it, for end to end right of way permissions

5. Electricity for telecom networks to be given at industrial rates
6. No GST on ROW permissions
7. Towers to be classified as plant and machinery
8. Common telecom infrastructure in all new buildings
9. All Central, state and local authorities to be brought under the purview of the common law and effective co-ordination and co-operation between all these agencies to be facilitated through a robust framework
10. Any kind of sealing provisioning must be done away with and regularization should be incentivized.
11. Disruption of telecom infrastructure to be a criminal offence
12. Provision for an effective dispute resolution framework.

Framework for Mergers & Acquisitions

1. While DoT is a part of the NCLT process and actively participates in the whole process, the applicant/petitioner companies are still required to approach DoT for approval of the demerger/merger of licences or telecom business on record. The NCLT proceedings itself take at least 8-12 months and the approval from DoT thereafter also take 2-4 months, leading to a total time frame of 10-16 months for the demerger/merger to be completed. This results in significant loss of time and value to the merging entities. It is important to note that DoT is already a part of the NCLT merger proceedings, Therefore,
2. No separate process by DoT after NCLT approval has come through
3. DoT should simplify and align approval process with NCLT proceedings:
4. The merging entities should not be required to approach DoT separately for its approval and the approval of DoT should be a part of the NCLT merger/demerger process.

Provisions pertaining to Insolvency

1. The extant legal framework under Insolvency and Bankruptcy Code ('IBC') to be continued

Expanding Scope of USOF

1. Industry has been the sole contributor to USO Fund & can take pride in the achievements
2. Time has come to end the USO levy since private sector has been instrumental in achieving the objectives of rural connectivity over the years by constantly rolling out telecom networks in rural and unconnected areas.
3. Today rural tele-density has surpassed the objectives laid down under successive telecom policies. Despite this, while USO collection has increased, the disbursement has remained low, leading to substantial unutilised accumulated surplus in the Fund.

4. Therefore, the new law should enshrine sun-setting of USO Levy, or freeze the levy for the next few years until the current available funds are exhausted effectively. It can then be restarted with a significantly lower rate and with increased number of contributing entities.
5. Research and development of new technologies, and promotion of employment and training activities are activities unrelated to the objectives of the Fund and may be met by the Government through other means

Penalties

1. Review of the penalty framework – so that it is proportionate to the default/deviation.
2. Introduce a Central Appellate mechanism for consistent application /approach to penalties
3. Maximum limit of Rs. 50 crores per service area may be reviewed downwards
4. A via media should be created to provide for out of Court settlement of pending litigations – an option for arbitration should be provided.

Standards, Public Safety & National Security

1. Harmonization with global standards is key for ensuring inter-operability and achieving economies of scale
2. India standards must also be put through the global process so that they can be internationally adopted
3. National security is of prime importance and must be ensured. Thought may be given to reducing overlapping requirements – that lead to duplication of efforts and costs – security processes may be streamlined
4. Cost sharing between TSPs and LEAs/ user departments. TSPs have been at the forefront of ensuring that they comply with the requirements laid down by the law enforcement agencies, and any new additional requirements put up by such agencies. However, such demands from LEAs are increasing, putting substantial cost and investment burden on the TSPs. Therefore, the new Act should contain a provision for Government funding to be made available to TSPs for implementation of security measures in national interest and put in place a cost-sharing mechanism between TSPs and LEA/user government departments. Such an approach is followed in other jurisdictions as well e.g. Australia, United Kingdom..
5. Comprehensively cover secure connectivity issues and cooperation with Law Enforcement Agencies ('LEAs'), etc.
6. To protect national security, all modes of communications to be regulated.
7. Temporary stopping / shutdown orders in an area/district/state must be only through an SOP approved by DoT, and Telegraph being a Union subject, only the Central government should be

the governing authority in this regard. The current ad-hoc requests and orders to stop internet services in an area e.g. during states' examinations causes significant inconvenience to local public at large.

8. Illegal possession and use of telegraph should be non bailable and cognizable offence
9. To mitigate issues related to interference, the new Act should declare the use of illegal SIM boxes / repeaters / jammers as a non-bailable and cognisable offence.
10. Any damage / vandalism of telegraph apparatus or site or location having telegraph apparatus should be classified as a non-bailable and cognisable offence. Further, a provision should be proposed in the Act that any/all authorities and agencies (e.g., civil, utility) whose work may have a bearing on a Telegraph asset (e.g., Fiber/ Tower) must mandatorily give an advance notice of 30 days before commencing the work on the route so that TSPs / IP1s can make appropriate arrangements of any damage, cuts, etc. In the absence of such timely and appropriate notice, the agency/authority/entity must compensate for the damage and loss caused to the TSP and/or IP1.

Email **Naveen Kumar**

FICCI Comments on the Consultation Paper on 'Need for a new legal framework governing Telecommunication in India'

From : sarika gulyani <sarika.gulyani@ficci.com> Sat, Sep 03, 2022 02:32 PM
Subject : FICCI Comments on the Consultation Paper on 'Need for a new legal framework governing Telecommunication in India' 1 attachment
To : Naveen Kumar <naveen.kumar71@gov.in>
Cc : vidit rai <vidit.rai@ficci.com>, sudhir malik <sudhir.malik@ficci.com>

Dear Shri Naveen Kumar Ji,

At the outset, FICCI would to thank the Department and welcome the opportunity provided by the Department of Telecommunications (**"DoT"**) to comment on its Consultation Paper on the 'Need for a new legal framework governing Telecommunications in India'[1] (**"Consultation Paper"**) issued on 23rd July 2022 for public consultation.

With the emergence of technological developments, IP based data services have become the primary driver to provide seamless services be it telecommunications, Broadcasting and IT sectors, which hitherto used to be considered distinct from each other will drive the digital society of the future and ultimately benefit both Indian citizens and businesses.

We would like to thank the DoT for this opportunity and would like to bring forward the following comments and recommendations in relation to some of the subjects discussed in the Consultation Paper and the corresponding concerns that the industry is currently facing:

While we give our inputs on the consultation, we request that a draft of the proposed legislation be put out for public consultation so that stakeholders are able to respond comprehensively to the proposed new legal framework. Further, sufficient time must be provided for stakeholders to provide their comments.

We are hopeful that the comments that we have provided on the Consultation Paper are carefully considered and taken on board by the Hon'ble DoT. We remain available for any further discussion/information at DoT's request.

Simplification of the Regulatory Framework

1. As technology obsolescence increases with the shortening lifespan of technologies and increased convergence of technologies and services, the new, law should be future-proof to meet future requirements of rapidly changing technologies and industry dynamics including investments.
1. We welcome this initiative and believe that a simple future fit regulatory framework should
   a. Be light touch, with consistent application of rules across market players. Globally as well, there is a move towards reducing licensing requirements and regulatory burdens in the telecom sector. The International Telecommunications Union (**ITU**) recommends that regulators reduce unnecessary regulatory burdens and minimise regulatory hurdles in the telecom sector.[2]
   b. Be developed in coordination and cooperation with all concerned ministries (i.e. DoT, MeitY, MIB, DoS, MHA etc).
   c. Ensure flexibility to learn and implement the good practices from other regulatory regimes as well as business-friendly measures initiated and implemented by other government ministries/agencies.

d. Encourage innovation and continuous upgradation of technology for providing new services and facilities
e. Encourage and protect investments.
f. Foster efficiency, transparency, inclusiveness and regulatory certainty and predictability to support national aspirations and goals
g. Have proper checks and balances, not to give unbridled power to the executives and eliminate the concept of discretionary powers
h. Not be high cost. India's regulatory levies remain one of the highest globally. Many advanced regulatory regimes recover only the cost of administering a resource e.g. OFCOM in the UK (UK Telecom Act 2003), and FCC in the USA, and Australia. Thus India's new law too should align with such global best practices and sector-specific levies should be reduced and recover only the cost of administration / administering the resource/asset/activity. Further, Government levies should not attract GST.
i. Adopt best practices around regulatory impact assessment or RIA as followed by the world's leading regulators e.g. OFCOM in the UK. All policy and regulatory decisions and interventions should be based on RIA and the RIA must be made part of the new law.
j. Clarify and streamline the key terms and definitions captured in the Indian Telegraph Act, 1885 and the Indian Wireless Telegraphy Act, 1933.
k. Consider a 'single-window clearance system' for the required approvals/clearances with a provision for deemed approval
l. Adopt a principle-based approach to simplify compliance and enable the adoption of new-age technologies such as 5G, the internet of things, etc., touted to transform operations, increase automation and efficiency, and enable the implementation of new products or services.

2. We also suggest that the new law should include a provision/ clear commitment to reducing the litigation in the sector through devising some mechanism for providing for out-of-court settlement eg provision of an arbitration process.
3. Any new framework should be applied prospectively only and also have a transition phase so that existing business cases are not adversely impacted.

Spectrum Management

1. A world-class digital infrastructure will require that the radio spectrum is managed efficiently and effectively. An essential element of the future gigabit network that needs particular consideration is the final link that connects the user to the network. This final link must be strong so that the network is also strong.
2. Mobile networks resiliently absorbed the shock from the Covid-19 pandemic, underscoring the importance of spectrum as a national resource, also acknowledged by the Government. The cost of access spectrum impacts the total cost of telecommunications services and the sustainability of the telecommunications industry itself.
3. Further, as new spectrum users emerge, have a clear decadal roadmap for spectrum assignment and allocations, with clearly defined terms and conditions (T&Cs).
4. Important principles that may be looked at in the context of spectrum management include

a. Harmonization to global standards for delivering economies of scale
b. Technology neutral approach
c. Regulatory impact analysis and public consultation before considering alternate spectrum use
d. No need for any statutory permission for sharing, trading or leasing of the spectrum.
e. Refarming unutilized frequency bands to ensure optimum usage for IMT and 5G services.

Right of Way

1. While the government has sought to address complex and expensive RoW approvals via RoW Rules 2016 and amendments thereof, and brought under the PM Gati Shakti plan through the Sugam Sanchar portal, on-ground challenges remain especially on charges.
2. Therefore, the new Act should give legal backing across states for Telecom RoW permissions for laying fibre, installation of telecom towers, small cells etc. RoW charges must be consistent and

commensurate only with the administrative/restoration charges to ensure the viability and affordability of services. Since fibre connectivity needs to proliferate with greater speeds, it is also important that the decision to lay fibre is given in a time-bound manner. These are required to ensure a smooth and quick rollout of 5G services as well as wired broadband services.

3. In line with the above, the new law should ensure the following:
    a. Right of Way rules should be made legally enforceable
    b. Ensure non-discriminatory access is provided to all the telecom players
    c. ROW charges on administrative/restoration costs basis to be enshrined in the new law
    d. Right Way portal to be implemented by every state for an end to end the right of way permissions
    e. Electricity for telecom networks to be given at industrial rates
    f. No GST on ROW permissions
    g. Towers to be classified as plant and machinery
    h. Common telecom infrastructure in all new buildings
    i. All Central, state and local authorities to be brought under the purview of the common law and effective coordination and cooperation between all these agencies to be facilitated through a robust framework
    j. Disruption of telecom infrastructure is a criminal offence

Framework for Mergers & Acquisitions

1. While DoT is a part of the NCLT process and actively participates in the whole process, the applicant/petitioner companies are still required to approach DoT for approval of the demerger/merger of licences or telecom business on record. The NCLT proceedings itself take at least 8-12 months and the approval from DoT thereafter also take 2-4 months, leading to a total time frame of 10-16 months for the demerger/merger to be completed. This results in a significant loss of time and value to the merging entities.
2. Law may consider simplifying the approval process for mergers and acquisitions by requiring entities to comply with the scheme for restructuring under the Companies Act, 2013 (as amended) and after approval of NCLT to simply inform/intimate DoT thereafter. This will alleviate dual approval requirements from NCLT and DoT

Provisions pertaining to insolvency

1. The extant legal framework under the Insolvency and Bankruptcy Code ('IBC') should be continued
2. Insolvency must be dealt with under existing legislation to the extent that sufficient provisions already exist. Any attempt to carve out a separate regime for licensed entities may result in overlap and regulatory uncertainty for entities. This would increase costs, result in delays, and discourage potential investors intending to invest in the telecommunication industry.

Expanding Scope of USOF

1. The industry has been the sole contributor to USO Fund and can take pride in its achievements. While USO collection has increased, the disbursement has remained low, leading to a substantial unutilised accumulated surplus in the Fund.
2. The time has thus come to end the USO levy especially since the private sector continues to be instrumental in achieving the objectives of rural connectivity over the years by constantly rolling out telecom networks in rural and unconnected areas.
3. Therefore, the new law should enshrine the sun-setting of the USO Levy, or put the levy in abeyance for the next few years until the currently available funds are exhausted effectively. It can then be restarted with a significantly lower rate.
4. We submit that the scope of the Fund should remain within the overarching objective of provisions of ICT services – whether in rural or underserved urban areas
5. Research and development of new technologies and promotion of employment and training activities are activities unrelated to the objectives of the Fund and may be met by the Government through other means

Penalties

1. The existing Acts/Rules/regulations governing the telecommunication space in the country prescribe penal sanctions in cases of non-compliance. In the interest of clarity, incentivisation of regulatory compliances and ease of doing business, to introduce proportionality-based penalty schemes
2. In the absence of explicit guidelines, a maximum penalty amount (Rs. 50Cr) is often imposed even for minor deviations. The new law should enable penalty provisions that should be commensurate with the violation and be proportionate to the default/deviation.
3. Penalties should not be applied in case of minor or non-substantive deviations. Harsh penalties, such as cancellation of licenses/registrations, may be exercised as a last resort for instances of non-compliance.
4. Integration of precise timelines on portals and compliance checklists can assist relevant authorities in assessing the extent of compliance by applicants and allow for faster approvals for entities that are compliant with the respective requirements as demarcated.
5. The new law should also bring the concept of discount and settlement procedure in penalty cases, as followed by some other jurisdictions to settle such cases.
6. There is also a need to reduce the amount of litigation in the sector – a resolution mechanism for allowing for out-of-court settlement may an incorporated in the new law

Standards, Public Safety & National Security

1. Harmonization with global standards is key for ensuring interoperability and achieving economies of scale.
2. Standards developed in India must also be put through the global process so that they can be internationally adopted.
3. Adopting global standards will help Indian manufacturers to bring Indian products and solutions to the global market. This will help fragmentation in catering to one standard for the Indian market and the other to bring products to other countries. DoT is recommended to encourage Indian R&D institutes, universities and start-ups to contribute to international standards viz 3GPP, IEEE, etc. and not develop a new standard that would have limited acceptability in the global space.
4. When adopting global standards, there should not be tweaking of the standards. Rather unique Indian requirements and solutions may be explored within the framework of the global standards.
5. Conformity assessment bodies must be independently evaluated and verified against recognised international standards by accreditation bodies.
6. The regulatory dispensation in testing and certification undertaken by TEC under its MTCTE certification has been subject to frequent changes which have been undertaken without adequate industry consultation. Such frequent changes have a detrimental impact on the business climate and project India in an unfavourable light as far as global trade and the international business community is concerned. DoT should ensure that all organisations under its ambit, like the TEC, undertake mandatory public consultation with the relevant stakeholders before issuing any regulations.
7. National security is of prime importance and must be ensured.
8. A thought may be given to reducing overlapping requirements – that lead to duplication of efforts and costs – security processes may be streamlined.
9. Costs of security should be shared between TSPs and LEAs/User departments and costs above a certain threshold level should be borne by the Government – in case any outcomes are sought to be expedited. The new law should put in place a cost-sharing mechanism between TSPs and LEA/user government departments. Such an approach is followed in other jurisdictions as well e.g. Australia, and the United Kingdom.
10. Temporary stopping/shutdown orders in an area/district/state must be only through an SOP approved by DoT, and Telegraph being a Union subject, only the Central government should be the governing authority in this regard. The current ad-hoc requests and orders to stop internet services in an area e.g. during states' examinations cause significant inconvenience to the local public at large.
11. Illegal possession and use of telegraphs such as illegal SIM boxes/repeaters/jammers should be a non-bailable and cognizable offence. Any damage/vandalism of the telegraph apparatus or the site or any physical telegraph apparatus should be classified as a non-bailable and cognisable offence. Further, a provision should be proposed in the Act that any/all authorities and agencies (e.g., civil, utility) whose work may have a bearing on a Telegraph asset (e.g., Fiber/ Tower) must mandatorily

give advance notice of 30 days before commencing the work on the route so that TSPs / IP1s can make appropriate arrangements of any damage, cuts, etc. In the absence of such timely and appropriate notice, the agency/authority/entity must compensate for the damage and loss caused to the TSP and/or IP1.

We hope that the Ministry will find these comments useful, as FICCI will be delighted to participate and support the Government of India in future consultation processes.

Warm Regards,

Sarika Gulyani
Director & Head-ICT, Mobile Manufacturing, Emerging Technologies, Digital Transformation & FICCI-ILIA Division
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FICCI Corporate Identity Number (CIN) : U99999DL1956NPL002635

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[1] Available at - https://dot.gov.in/sites/default/files/Consultation%20Paper%20and%20Notice.pdf?download=1

[2] International Telecommunications Union, Report of the Chairperson on the ITU Global Symposium for Regulators, 2004, https://www.itu.int/ITU-D/treg/Events/Seminars/GSR/GSR04/documents/ChairpersonReport.pdf, page 20.

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Consultative paper by DoT

From : anurag awasthi <anurag.awasthi@iesaonline.org> Thu, Aug 18, 2022 04:53 PM
Subject : Consultative paper by DoT
To : Naveen Kumar <naveen.kumar71@gov.in>
Cc : krishnamoorthy@iesaonline.org, tyagi vivek88 <tyagi.vivek88@gmail.com>, sunil acharya <sunil.acharya@iesaonline.org>, sanjay gupta <sanjay.gupta@nxp.com>

Dear Mr. Naveen

We spoke on the subject today.

As an industry body we would seek extension till the first week of Sep 22 to give our inputs post collation of the same from our members for the consultative paper as promulgated by you.

Do let us know the timelines, if the same are extended thereof in this regard.

Best wishes

Col Anurag Awasthi (R)
Vice President (Public Policy, Government and Corporate Relations)
India Electronics and Semiconductor Association

Need for a new legal framework governing Telecommunication in India

From : sanjayjawalkar@gmail.com Sat, Jul 30, 2022 05:27 PM
Subject : Need for a new legal framework governing Telecommunication in India
To : Naveen Kumar <naveen.kumar71@gov.in>

Shri.Nveen Kumar Ji.

We must thank the Ministry of Communication and Dept of Telecommunication for allowing us to participant in formulating law.. However my suggestion/comments would be as under:

1. We knew, approximately 117 Cr subscriber are using telecom. it means many more people are still away from reach of telecommunication service. We need to explore how we can bring left out subscriber in main stream.
My humble submission is that we should make such a law which compel Telecom service provider to educate/instigate common people to use telecom services. In India many remote places/Adivasi/Triable area no proper infrastructure for telecommunication this one of the reason these people are out of reach of telecom service. We also make an law and ask these Telecom industry to use their CSR fund for development of telecommunication infrastructures in these area.

2. This will enhance the business of service provide as well as Govt generate some revenue

With regards,

Sanjay Jawalkar
Jawalkar & Associate
Gala No.8, Akashay Complex,Basement of Aishwarya Briyani House.
Plot No.GP-64, Block "G", Near Thermax Chawok, Chinchwad
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दूरसंचार के लिए नए कानून के विषय में प्रस्ताव

From : milestonesofttech@gmail.com Tue, Aug 16, 2022 11:51 PM
Subject : दूरसंचार के लिए नए कानून के विषय में प्रस्ताव
To : Naveen Kumar <naveen.kumar71@gov.in>

महोदय,
बेहद हर्ष का विषय है कि दूरसंचार विभाग अपने लिए नए कनून की रूपरेखा तैयार कर रहा है इस विषयक मेरा सुझाव है कि दूरसंचार विभाग इंटरनेट सर्विस प्रोवाइडर हेतु जारी किए जाने वाले लाइसेंस के लिए सभी केटेगरी A/B/C के लिए प्राइवेट लिमिटेड कम्पनी की अनिवार्य शर्त है। जिसे C केटेगरी के लिए हटाना चाहिए। साथ ही यह भी शर्त है कि यदि कोई कंपनी अपने पुराने OTHER THEN INTERNET का बिजनेस करती है बाद में उसने ISP लायसेंस लिया , तो DOT उसके पूरे टर्नओवर पर AGR लगाया जाता है जबकि वह कंपनी का अन्य बिजनेस भी से आय और व्यापर टर्नओवर में शामिल होता है किंतु दूरसंचार विभाग पूरे टर्नओवर पर AGR 8% लगा देता है । जबकि इतना मार्जिन आज के समय में किसी भी बिजनेस में नहीं मिलता है।
जो नैतिक रूप से गलत है और साथ ही तकनीकी रूप से भी गलत है जिसके कारण कंपनियां इस कार्य से दूर भागते हैं एवं जो कंपनी इस मामले में फंस जाती है वह लिटिगेशन, विभिन्न कानूनी दांव पेंच में फस जाती है। जिससे विभाग उस कंपनी के सम्मुख विभिन्न प्रकार की कानूनी पेचीदगियां पैदा हो जाती हैं।
इसी प्रकार DOT एवम TDSET में अनेक केस पेंडिंग है। वर्तमान कानून ISP लायसेंस के साथ पुराने व्यापार के साथ नया ISP BUSSINESS चलाने के लिए हतोत्साहित करता है ।

इसी प्रकार की तकनीकी परेशानियों एवं कानूनी दांवपेच में हमारी कंपनी माइलस्टोन सॉफ्ट टेक प्रा लिमिटेड भी फंसी हुई है । जिसका TD SET मे मामला चल रहा है।
कृपया नए कानून में इस प्रकार की तकनीकी विषयों को ज्यादा गंभीरता पूर्वक ध्यान देते हुए एसी प्रावधानों को विलोपित करेंगे एवम सुधार करेंगे,ताकि नए उद्यमियों को लाभ मिले एवम कोई अनावश्यक कोर्ट और कानूनी दिक्कतों का सामना न करना पड़े।

भवदीय

जिया उल हक
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24 August 2022

Sri K. Rajaraman
Secretary (T) to Govt of India
New Delhi

Need for a New Legal Framework Governing Telecom in India

Dear Sri Rajaraman

A comprehensive review of regulatory framework of telecom sector is an important move of the Government. This Think Tank comprises senior level experts in ICT, and allied areas of advanced science. technology and social science, serving as well as retired. We have deliberated in some depth on the relevant issues and submit the following points for consideration at policy level.

Should any further discussion be needed, we shall be happy to participate.

Kindest regards

Sincerely
N K Mathur
Chairman

Infocom Think Tank

Need for a New Legal Framework Governing Telecom in India

1. The Indian Telegraph Act 1885 being more than a century old, needs a fresh look – specially with a view towards 'Aatmanirbhar Bharat' and keeping 'Antyodaya' as an important objective. A brief **Preamble** may be introduced to explain these goals.

2. The Consultation Paper is quite comprehensive and addresses most of the requirements in the present-day context. It duly takes note of the fact that technology and nature of telecommunications have undergone massive change. Some policy points are mentioned hereunder for consideration at Government level; other issues could be taken care of in subordinate legislation under 'Rules'.

3. First of all – the name of the Act should be Indian Telecom Act. The date could be modified to 2022. The present Act is quite a versatile and concise piece of Legislation which has withstood the test of time over 135 years with very few amendments; not many countries in the world have a similar versatile Act;

4. The definition of 'Telegraph' in the present Act is very broad, encompasses all means of telecommunication, even the futuristic Free Space Optics for communications. It is suggested that 'Artificial Intelligence (AI)' should also be included under 'Definitions' in Section 2 of the Act. The word 'Telegraph' needs to be replaced with the word 'Telecommunication' in various Sections of the Act..

5. Section 4 of the present Act provides all necessary powers to Government. It has covered and allowed telecom Liberalisation and Privatisation as well as related activities.

6. The Section regarding USO (Universal Service Obligation) Fund needs to be made broad based as 'Telecom Development Fund' covering USOF as well as support from national exchequer; details be transferred as Rules under the Act. The economic penalties should also be part of various Rules (rather than in the Act), so that the amount of Fine/ Penalty etc.can be reviewed and revised every 5 – 7 years, as per changes in economic situation.

7. In view of the critical significance of Spectrum Management, it should be carried out in a more integrated manner and the WPC Wing needs to be strengthened by enlarging it into an independent Department of the Ministry.

8. With such actions, it is felt that the Indian Telecommunication Act can be a simple, stable and broad-based Act; details can be part of Rules - existing or to be framed under the Act.

Supported by - Centre for Media Studies (CMS), "Research House", Saket, New Delhi - 110017

Luthra and Luthra
LAW OFFICES INDIA

Recommendation for New Legal Framework Governing Telecommunication in India

In the light of various technological advancements, and the need to have a legislation, well equipped to address the concerns & issues of the telecommunications sector of India, at present or in the future, Department of Telecommunications (**"DoT"**) has released a consultation paper on a new & revamped legal framework for the telecommunications sector. It is a very welcome initiative taken by the DoT, to introduce a consultation paper highlighting the need and nitty gritty of an upcoming & updated legislation for the Indian telecom sector.

The following recommendations are made to the consultation paper, keeping in mind that a new regulation must create simplicity of systems within the telecom industry and longevity in terms of applicability, relevance, and effectiveness of laws:

1. Background

1.1 While revolutionary for their time, and still valuable today, laws such as the Indian Telegraph Act, 1885 (**"Telegraph Act"**) and Wireless Telegraphy Act, 1933 (**"WT Act"**), require elaboration, amendments and repealing of parts and sections to accommodate a more progressive structure. The primary intent and focus of the Telegraph Act & WT Act, when first implemented, was to further colonial interests of the British empire and to maintain a strong hold over law and order. However, these legislations lack relevance and application in today's times of the ever-growing technological landscape.

1.2 The provisions of these legislations fail to cater to the modern-day technologies. The need of the hour is to have a legislation in place that can keep abreast with the technologies of today, including a legal framework that enables and caters to convergence of technologies in telecom, broadcasting, and IT sectors.

2. General Recommendations

2.1 The Telegraph Act is 132 years old and need to be replaced by a new law, which is comprehensive, forward looking and provides enabling framework for the convergence of technologies and emerging technologies like IoT, AI, M2M connectivity, Robotics, smart cities, etc. The current approach of the DoT is to regulate this sector through telecom policies notified by it from time to time, and then implement such policies under the Telegraph Act. This creates regulatory gaps because the legal framework is old and the policies are new, also the objectives will be different. Normally, such policies should flow from the legal framework with well-defined objectives. Just to take one example, Section-4 of the Telegraph Act deals with the establishment of telecom network and there is no reference to any telecom services while Telecom Regulatory Authority of India Act (**"TRAI Act"**) regulates 'Telecommunication Service". Some telecom services could be provided without establishing a network like VNO services. Although, VNO is granted a license under Section-4 of the Telegraph Act, but it can be argued that it may not be come within the ambit of Section-4 because it is not establishing the telecom network. Also, infrastructure providers and tower companies are currently registered by the DoT, and not licensed under Section-4 of the Telegraph Act. In view of this, Infrastructure Providers, despite being the backbone of telecom network, may be outside the ambit of Telegraph Act. As such, we recommend that the new legislation in this area must have enabling framework to incorporate within its scope telecommunication, broadcasting, and radio services. The new law should be comprehensive, covering the whole gamut of telecom and broadcasting services, including important terms and conditions of providing the services, establishing telecom infrastructure and network, safety and security standards of network, rights of customers, ensuring digital sovereignty, safety and security of digital communications, security conditions, consequences in case of non-compliances, etc.

2.2 Similarly, Section 5, WT Act prohibits possession of wireless equipment by anyone without obtaining a license as per provisions of the Telegraph Act. However, this provision and its application is not pragmatic in today's world where every person possesses multiple types of wireless equipment like mobile phones, wireless earphones etc. According to this provision, every person would be obligated to obtain a telecom license, which is not practical. Hence, such provisions should be changed to reflect new realities and technological advancements.

2.3 The existing legislative framework in the Indian telecom sector, centres around two prominent bodies, namely, the DoT and TRAI. While their functions and responsibilities have been delineated via various legislations in place, we find that it is pertinent to elaborate on such powers. TRAI was created as an independent regulator in the telecommunications sector. While the DoT is the licensing authority and is given the power to formulate policy and grant telecom licenses. TRAI is entrusted with the task of tariff determination, specifying quality of services, regulating inter connection agreements, consumer protection and nurturing the telecommunication industry by, among other things, creating healthy competition between service providers. At the same time, Telecom Disputes Settlement & Appellate Tribunal (**"TDSAT"**), was entrusted with judicial powers for determination of disputes in the Indian telecom sector. Each body has a valuable purpose, and their functions must be elaborated in accordance with some basic guidelines.

2.4 Moreover, with respect to the TRAI Act, we recommend that Telecom Regulatory Authority of India (**"TRAI"**), as the regulator of Indian telecom sector, must be given more teeth and powers, so that it can become a more efficient & effective regulator. In order to achieve this purpose, we recommend revamping the TRAI Act, as well as inclusion of new powers, functions & responsibilities of TRAI, under the new legal framework. It is recommended that it may benefit the industry to rethink the abovementioned power division and further, rethink the new legal framework to empower TRAI to spearhead and regulate the licensing regime. TRAI, being an independent regulator, is expected to take up the licensing regime in an unbiased manner and would be able to provide a level playing field to various industry players. This practice of the regulator of the telecom sector, playing the dual role of the licensing authority of the telecom sector, is quite common, even in prominent economies like the United Kingdom. This will also enable TRAI to regulate the telecommunications sector closely and more actively. Inspiration in this regards can be drawn from the securities market of India, where the regulator, Securities Exchange Board of India (**"SEBI"**), overlooks the securities market entirely and proactively.

2.5 TRAI was set up under the TRAI Act as an independent regulator to the telecom sector, created to check undue power of the government and to protect consumer interests. Currently, Section 25(1) of the TRAI act allows the Central Government to issue directions to TRAI on various matters such as India's sovereignty and integrity, State security, friendly relation with foreign states, public order, decency, and morality. Due to the ambiguous nature of the terms "morality" and "decency", we believe this provision is at risk of being misused, overused or a source of confusion. As such, we recommend replacing the terms "morality" and "decency", from a provision of similar intent in the new legal framework, with the phrase "protecting the interest of subscribers".

2.6 It is recommended that the penalties for offences, to be mentioned in the new legal framework, should be linked with nature of offences as well as damages suffered by DoT via commission of such offences, rather than raising the demand of ₹50 crores for every breach. Section 73 and Section 74, Indian Contracts Act, 1872 elucidate upon the consequences of breaching a contract in India. Section 73 states *when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it*, whereas Section 74 prescribes that *when an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.*

Hence, a combined reading of Section 73 and Section 74 implies that the damage from the telecom operator on account of breach of a contract should be related to any loss or damage caused to the DoT and which naturally arose in the usual course of things from such breach. In other words, the quantum of damages should be linked to the nature of breach and the extent of loss. As the Unified License Agreement is essentially a contract between DoT and the telecom licensees, it is imperative that the penalties hence prescribed are proportionate to the offences committed. Considering this, it is recommended that the new legal framework elaborates, in detail, upon penalties to be prescribed for various offences separately, while also keeping in mind the rationality behind the monetary value of such penalties.

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By Email
Without Prejudice

To,

Shri Naveen Kumar,
Joint Secretary - Telecom,
Department of Telecommunications
Ministry of Communications.

Sanchar Bhawan 20, Ashoka Road, New
Delhi - 110001

Email: naveen.kumar71@gov.in

August 25, 2022 IFF/2022/089

Subject: Submission of comments on the consultation paper on 'Need for a new legal framework governing Telecommunication in India'

Dear sir,

1. The Internet Freedom Foundation ("IFF") is a registered charitable trust which advocates to protect and advance constitutional freedoms in a digital society. We work across a wide spectrum of issues, with expertise in free speech, electronic surveillance, data protection, net neutrality and innovation; we aim to champion privacy protections, digital security, and individual freedoms in the digital age.

2. We appreciate the Ministry's commitment to identify the existing gaps in the legal framework governing telecommunication in India and draft a new framework that would close these gaps. The Indian Telegraph Act, 1885 ('Telegraph Act') is a statute from the 19th century and predates the internet as we know it today by almost 100 years. However, we also believe that any new framework which replaces the Indian Telegraph Act, 1885 should be built upon existing constitutional principles and must enshrine constitutionally guaranteed fundamental rights.

3. We are writing to you to offer our comments on the consultation paper on the 'Need for a new legal framework governing Telecommunication in India' on which comments have been invited until August 25, 2022. For clarity, our inputs focus on two key clusters:
    a. Necessary additions to be made in the new framework; and
    b. Revision of existing standards for public safety and national security

4. Our recommendations engage with specific issues such as internet shutdowns, net neutrality, and an overhaul of the surveillance framework contained in the Telegraph Act.

We hope that the Ministry takes forward the specific suggestions made by us. We remain at your disposal should you wish to discuss the matter any further.

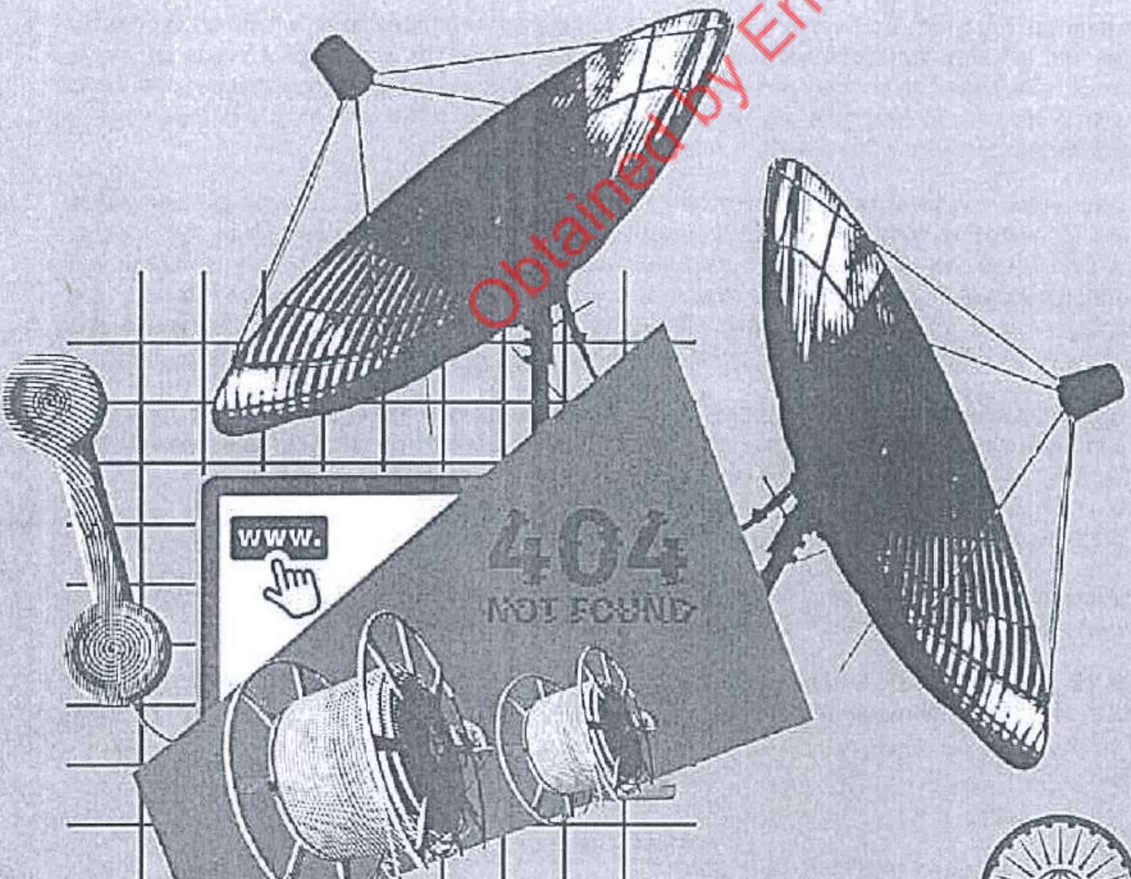
Kind regards,

Anushka Jain,
Associate Policy Counsel (Surveillance & Transparency),
Internet Freedom Foundation

Internet Freedom Foundation

Comments on the consultation paper on:

Need for a new legal framework governing telecommunications in India



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Comments on the consultation paper on 'Need for a new legal framework governing Telecommunication in India'

Outline of the present submission

Our submission is branched into two broad headings for convenience and consideration. Each section highlights an overarching theme along with our comments and recommendations on the Consultation Paper on 'Need for a new legal framework governing Telecommunication in India'. These are:

a. Necessary additions to be made in the new framework; and
b. Revision of existing standards for public safety and national security.

Before we proceed with these issues, we would like to commend the intent towards improving India's telecommunication infrastructure and the legal framework governing it. As the digitisation drive under the Digital India campaign continues, facilitating stronger telecommunication and digital governance measures is vital, especially after the online push seen during the COVID-19 pandemic. In this regard, focusing on digital rights of citizens while drafting telecom policies is important. We reiterate that the primacy of citizen rights over any other objectives of the digital economy must be maintained to ensure that the collection and processing of data does not result in harm. Further, to ensure government accountability, transparency mechanisms should be strengthened. While the consultation paper contains a specific section on what a new law on telecommunications needs to address, we are of the opinion that it leaves out certain important issues that are affecting the lives of Indian citizens and other users of the internet.

Below we provide our comments and recommendations on the paper.

1. Necessary additions to be made in the new framework

1.1. The need for an enforcement mechanism of net neutrality principles

1.1.1. Licences granted under section 4 of the Telegraph Act, stipulate the terms and conditions circumscribing network operations and provision of services by telecommunication service providers. On July 31, 2018, the Department of Telecommunication (DoT) formalised the Telecom Regulatory Authority of India's (TRAI) recommendations on network neutrality dated November 28, 2017. The DoT amended various telecom licenses, imposing the principle non-discriminatory treatment of internet traffic as a licensing obligation on internet providers. "Discriminatory treatment" has been clarified to include practices like blocking, degrading, slowing down or granting preferential speeds/treatment to any content.

1.1.2. Despite these clear regulatory requirements, ISPs have still continued to discriminate against certain types of internet content and block them with impunity. These instances conform with observations from a larger study published by the Centre for Internet and Society which was published on January 17, 2020.[1] In it researchers found that the website blocklists of licensed internet service providers (ISPs) across India are widely inconsistent with one another, suggesting that a larger pattern wherein internet providers are either a) not complying with blocking orders or b) arbitrarily blocking websites without legal orders.

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[1] Kushagra Singh, Gurshabad Grover, and Varun Bansal, "How India Censors the Web," in 12th ACM Conference on Web Science, 2020, 21–28, https://doi.org/10.1145/3394231.3397891.

1.1.3. On September 22, 2020, the Telecom Regulatory Authority of India (TRAI) had forwarded a set of extremely meaningful recommendations to the Department of Telecommunications (DoT) regarding the enforcement of net neutrality principles by the Internet Service Providers (ISPs) and telecom networks. These recommendations included, the establishment of a Multi Stakeholder Body (MSB) to play an advisory and a regulatory role over the ISPs, overseeing the Traffic Management Practices (TMP) by the ISPs, among other key strategies towards realising the net neutrality principles. However, the DoT has failed to operationalise these recommendations, citing COVID-19 related budgetary concerns and other feasibility concerns related to the implementation of MSB.

1.1.4. Further, with 5G technology being adopted in the near future, there are concerns that it will affect consumer experience and net neutrality. Speaking at a panel discussion, the Director-General of the Cellular Operators Association of India (COAI), SP Kochhar said that tailoring networks for specific use cases - which is a unique quality of 5G technology - will be in direct contradiction to net neutrality laws in India. Therefore, it is important that TRAI again affirm its stand that the net neutrality principles adopted shall remain technology-neutral.

2. Revision of existing standards for public safety and national security

2.1. Internet shutdowns under Section 5(2) and the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017

2.1.1. Section 5(2) of the Telegraph Act permits the Central or State government to restrict or temporarily suspend internet services. The procedure the government must follow to suspend internet services is provided in Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 ('Suspension Rules'). However, the restriction can only be imposed on the occurrence of a public emergency or in the interest of public safety and if the government is satisfied that it is necessary to do so in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign states or public order or for preventing incitement to the commission of an offence.

2.1.2. Both, Section 5(2) of the Telegraph Act and the Suspension Rules were extensively considered by the Supreme Court in *Anuradha Bhasin vs Union of India*. In Anuradha Bhasin, in the context of a year-long communication shutdown in Jammu & Kashmir, the Supreme Court had held that internet shutdowns are a 'drastic measure' which may be imposed only if it is lawful, necessary and proportionate, and only after publishing internet suspension orders.

2.1.3. A petition filed by Mr Ajit Bhuyan has also challenged the constitutionality of the Suspension Rules. In his petition, he argued that the Suspension Rules violate the right to speech and access information as they confer unbridled power on governments to suspend internet services. He also argued that the Suspension Rules are beyond the scope, ambit and intent of Sections 5(2) and 7 of the Telegraph Act. The purpose of Section 5(2) of the Telegraph Act was to permit the government to restrict/intercept telegraph messages sent from one person to another, and not en-masse suspension of internet services.

2.1.4. The Standing Committee on Communication and Information Technology made a range of recommendations including a review of the legal regime for suspension of internet services, as it found the Department of Telecommunications' existing process lacks sufficient safeguards, and establishing a database of internet shutdown orders in its report on 'Suspension of telecom services/internet and its impact'. The Committee also noted that since the Department of Telecommunications was the nodal Department for the Suspension Rules, it is the duty of the Department to see and ensure that Review Committees are constituted in all the States.

2.2. Surveillance under Section 5(2) and Rule 419-A of the Telegraph Rules, 1951

2.2.1. The Union Government and State Governments are empowered to conduct surveillance under Section 5(2) of the Telegraph Act which is provided process and procedure by Rule 419-A of the Telegraph Rules, 1951 (as amended). A "'Standard Operating Procedure' for Interception, Handling, Sharing, Copying, Storage, and Destruction of Messages/Telephones" has also been issued by the Ministry of Home Affairs dated May 19, 2011.

2.2.2. Under Section 5(2) of the Telegraph Act, the executive is permitted to direct interception of messages only 'on the occurrence of public emergency' or 'if it is in the interest of public safety'. On the satisfaction of either of these two conditions, directions may be issued which are necessary in the interest of sovereignty or integrity of India, defence of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of an offence. There are various concerns with the existing framework for interception of messages under the Telegraph Act:

2.2.2.1. **Failure to specifically define grounds of surveillance**: As is evident from a comprehensive study of S.5(2), the rules and the Standard Operating Procedure, there is a failure to specifically define the grounds under which state interception may be conducted. At the same time, they contain powers which are broad and vaguely defined.

2.2.2.2. **Lack of sufficient oversight**: The existing Surveillance Framework under the Telegraph Act constitutes a Review Committee which is empowered to direct destruction of intercepted messages if interception is not in accordance with applicable law. However, the Review Committee only consists of members of the executive and there is no provision for any ex-ante or ex-post-facto judicial/independent review of directions issued by competent authorities. The absence of such judicial/independent authorisation as a pre-condition for surveillance renders these provisions unconstitutional. This is because the Hon'ble Supreme Court of India in *K.S. Puttaswamy vs Union of India* has held that any restriction of privacy must be lawful, necessary, and proportionate, and proportionality requires the executive to provide sufficient procedural safeguards. There are also concerns over whether the Review Committee, which meets once every two months, can effectively evaluate the legality of interception orders. This is because RTI responses have revealed that the Union Government issued approximately 7500 to 9000 orders of interception of telephones in a month in 2013.[2] Therefore, respectfully, the Review Committee cannot possibly apply their mind on each interception order, and it is nearly certain that unwarranted use of interception provisions is inadvertently approved by the Review Committee from time to time.

2.2.2.3. **Process fails to provide for constitutional rights of the surveilled:** The existing Surveillance Framework under the Telegraph Act also does not have any provision for informing the person surveilled even after surveillance has been conducted. Misuse of the Surveillance Framework is enabled by the fact that surveillance operates in secret, and as a result, effectively curtails the operation of Articles 32 and 226 of the Constitution. Thus, individuals cannot approach the High Court or the Supreme Court because they are not aware that they are being surveilled. As a result, irrespective of whether the grounds on which surveillance may be conducted are well defined, it may well remain a legal fiction and never checked and hence not implemented in practice. This is because a person who suspects that she is under surveillance, in many cases will have no way of proving it, and cannot, therefore, establish a breach in accordance with Articles 32 and 226, until that information is revealed. The effective exclusion of Articles 32 and 226, therefore, entails that, for all practical purposes, the decision of the Review Committee on whether applicable law has been violated, is final.

3. In light of the concerns raised in the preceding sections, we would like to make the following recommendations:

3.1. **Net Neutrality:** The principle of net neutrality requires internet service providers to treat all content equally without prioritising access to any one platform by creating "fast lanes" or by blocking/throttling access to others. Keeping the net neutral is essential for innovation as otherwise, newer or small/medium-sized companies will struggle to compete with rich corporations that could negotiate deals enabling faster/better access to content on their sites. To ensure that access to the internet is available to all, there is an urgent need that the DoT adopts enforcement mechanisms for net neutrality principles into law.

3.2. **Internet Shutdowns:** The Report of the Office of the United Nations High Commissioner for Human Rights on "Internet shutdowns: trends, causes, legal implications and impacts on a range of human rights" makes specific suggestions to States with regard to internet shutdowns.[3] These are:

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[2] "RTI Reveals as Many 9000 Phones, 500 e-Mails Intercepted Each Month during UPA," accessed August 22, 2022, https://www.aninews.in/news/national/general-news/rti-reveals-as-many-9000-phones-500-e-mails-intercepted-during-upa201812221804440001/.

[3] Office of the High Commissioner for Human Rights, "Internet Shutdowns: Trends, Causes, Legal Implications and Impacts on a Range of Human Rights" (United Nations, August 19, 2022), https://www.ohchr.org/en/documents/thematic-reports/ahrc5055-internet-shutdowns-trends-causes-legal-implications-and-impacts.

3.2.1. To ensure against arbitrary restriction or suspension of internet services, it is important that blanket internet shutdowns are not imposed.

3.2.2. Further, if imposition of shutdowns is essential, they should be:

  3.2.2.1. Clearly grounded in unambiguous, publicly available law;

  3.2.2.2. Necessary to achieve a legitimate aim, as defined in human rights law;

  3.2.2.3. Proportional to the legitimate aim and the least intrusive means to achieving that end; accordingly, they should be as narrow as possible, in terms of duration, geographical scope and the networks and services affected;

  3.2.2.4. Subject to prior authorization by a court or another independent adjudicatory body, to avoid any political, commercial or other unwarranted influence;

  3.2.2.5. Communicated in advance to the public and telecommunications or Internet service providers, with a clear explanation of the legal basis for the shutdown and details regarding its scope and duration;

  3.2.2.6. Subject to meaningful redress mechanisms accessible to those whose rights have been affected by the shutdowns, including through judicial proceedings in independent and impartial courts; court proceedings should be carried out in a timely fashion and provide the possibility to obtain a declaration of unlawfulness of shutdowns carried out in violation of applicable law, even after the end of the shutdown in question.

3.2.3. States should not ban, block or criminalise the use of encryption or circumvention tools or particular communications channels, such as virtual private networks, and should instead provide access to those tools.

3.2.4. States should always provide thorough public information, in a timely manner, regarding any Internet shutdowns that they may impose, including bandwidth throttling, limiting access to certain communication services, platforms or virtual private network blocking.

3.3. **Surveillance:** The fundamental issue with these provisions are their centralisation of power with the Executive branch of government and the lack of any judicial or legislative oversight. This promotes a complete lack of accountability and quite often results in allegations of use of surveillance for political purposes. To ensure that overbroad and illegal surveillance does not take place, it is necessary that this new framework contains provisions that narrowly define grounds of surveillance, provide sufficient judicial oversight of interception orders, and inform the surveilled person of the existence of the surveillance after the fact to ensure that their constitutional rights are protected.

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Internet Freedom Foundation ("IFF") is a registered charitable trust which advocates for the digital rights of Indians. Our mission is to ensure the growth of democratic rights with digitisation guaranteed under the Constitution of India.

internetfreedom.in

Comments on the Consultation Paper on 'Need for a new legal framework governing Telecommunication in India

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From : yashbhatnagar2355@gmail.com Thu, Aug 25, 2022 11:58 PM

Subject : Comments on the Consultation Paper on 'Need for a new legal framework governing Telecommunication in India 2 attachments

To : Naveen Kumar <naveen.kumar71@gov.in>

Dear Sir,

We are a dedicated team of student members from Kautilya Society, VIDHI at Dr. Ram Manohar Lohiya National Law University, Lucknow. We, as a Society, analyze and write on policy issues in various domains such as Governance, Environment, Data Protection, and so forth.

We are writing to you to offer our input on the Consultation Paper on 'Need for a new legal framework governing Telecommunication in India that was Invited till 25th August 2022.

The comments and suggestions are attached herewith.

Thanks and regards.

Comments on the Consultation Paper on 'Need for a new legal framework governing Telecommunication in India (Kautilya Society,RMLNLU).docx
24 KB

Comments on the Consultation Paper on 'Need for a new legal framework governing Telecommunication in India (Kautilya Society,RMLNLU).pdf
167 KB

To,
Mr Naveen Kumar,
Department of Telecommunication,
Government of India

Introduction

Telecommunication has the potential to unleash the true power of India's economy, accelerate socio-economic transformation and enable achievement of the vision of an "Aatma Nirbhar Bharat". Telecommunication is an enabler of digital governance that emphasizes data driven and people-centric delivery of goods and services to citizens and enterprises.

Emergence of new technologies such as 5G, Internet of Things, etc. among others offer many opportunities to transform the lives of millions of Indians. It is important to have a modern and future-ready legal framework which addresses the realities of telecommunication in 21st century India. 'Azadi ka Amrit Mahotsav' is an opportune time for reimagining India's telecommunication legal framework. India needs a new law which is clear, precise, and attuned to the realities of the sector for realizing the potential of telecommunication.

- **Effective right of way is a pre-requisite to achieve this to enable expansion of telecommunication network and improvement of telecommunication services. (¶ 18)**
  a. Right of Way in Telecommunication
    i. Telecommunication has the potential to unleash the true power of India's economy, accelerate socio-economic transformation and enable achievement of the vision of an "Aatma Nirbhar Bharat". Telecommunication is an enabler of digital governance that emphasizes data driven and people-centric delivery of goods and services to citizens and enterprises. Property subject to a Right-of-Way may be through an express, implied, or prescriptive easement granted to or controlled by the city or other public entity or may be owned by the city or other public entity in fee-simple or other freehold interest. It is important to provide effective guidelines for the Right of way to establish strategic simplify

and streamline the clearance process of RoW approvals for overground and underground telecom infrastructure, resulting in better connectivity. Basically, this is a framework for setting up telecom towers, laying fibre cables, settling disputes, and improve coordination among companies.

ii. The government can take reference of state-based guidelines like Guidelines for granting Right of Way (RoW) to Telegraph Infrastructure in Assam, 2018. Modern Policies like that of Uttar Pradesh Department of Information Technology and Electronics in which effective way of setting up nodal offices, Transmitting towers, land acquisition for putting fibre lines has been analysed.

iii. The government can take note of these guidelines and analyse how provisions of it can be effectively implements on a larger scale, preferably for a national jurisdiction., Considering that such acquisition will now be dealing with a complex mechanism of 5G Spectrum in the country.

b. Acquisition of such Rights for the 5G Spectrum and Dispute Resolution Processes

i. Recent acquisition of 5G spectrum by various companies has opened the door for deliberation in respect to a more detailed Right of Way and how it can assist in bringing the 5G technology to the country in an effective manner.

ii. The Indian Telegraph Right of Way Guidelines of 2016 and 2022 (amended) can play a huge role in establishing the procedure of acquisition. These rules seek to incorporate "uniform procedure for establishing overground mobile towers and telegraph line.

iii. The ease of permission should also be an aspect the government should look upon by the government. Since many telecom companies will strive to set up mobile towers and necessary Local and Wide Area Networks, the application for the same should be accommodative of rural, semi-urban, semi-rural and urban areas.[4]

iv. TDSAT (Telecom Disputes Settlement and Appellate Tribunal) set up under TRAI (Telecom Regulatory Authority of India) can adjudicate upon the disputes arose out in the proceedings of such applications, acquisitions of rights or any other claim settlement that the companies face in due course.

The new framework also needs to consider ways in which to overhaul the current Universal Service Obligation Fund with the wider concept of a "Telecommunication Development Fund". This can address the larger public purpose of ensuring delivery of universal telecommunication service to underserved rural and urban areas, research and development of new technologies, and promote employment and training activities. This can enable the growth of indigenous companies in the technology space.

It is very clear that technologies which are capital intensive and difficult to install like ICT technologies cannot be easily installed in remote places and difficult terrain, thus the rural and remote areas are at a certain disadvantage, and availability of these services in an economical manner becomes difficult in these areas. Thus, Universal services obligation Fund(USOF) comes in great help, a certain percentage of profit of the telecomm companies is collected in the fund which is used to fund the development activities of these technologies in the remote and rural areas.

How was 'United Services obligation Fund' Set Up?

USOF was set up by an act of Parliament in Dec 2003 by Amending Indian Telegraph Act,1885. Current USOF is funded from Universal Access Levy charged through License fee on licensee of DOT which is fixed at 5% of adjusted gross revenue(AGR).

Challenges faced by USOF

Structural ▪

- ▪ Projects can be awarded only to Licensed Telecom Service Providers (TSPs) on bidding basis▪
- ▪ TSPs are neither interested nor capable of executing projects in uncovered/undeserved areas

- **Technological**
  - Selecting appropriate technology - technology choice- is limited by many factors

- **Organizational**
  - low organizational capabilities- manpower, capacity, institutional mechanisms
  - Inter-agency Coordination
- Poor Financial health of BSNL
- Vastness of the country, difficult terrain in Himalayan, Boarder, Interior areas
- Lack of supporting infrastructure (power, road etc.)

HOW CAN A TELECOMMUNICATION DEVELOPMENT FUND BE SET UP?

Development funds like USOF differ a lot in the manner of their incorporation and control exercised, for example funds can be administered under government ministries, regulators, special agencies. India's USOF is currently an attached office under Department of Telecommunication(DOT) administered as a separate administrative organization.
Even after getting a statutory status there was still a big quantum lying unused in the Fund.
Hence, TELECOMMUNICATION DEVELOPMENT FUND can be set up as an Independent Authority/ Regulator as it naturally leads to less influence of government or political parties on the disbursement and the disbursements would be further expedited.

WILL THERE BE A TAX PRODUCED ON THE USAGE OF TELECOMMUNICATION SERVICES?

The USOF is financed by a Universal Services Levy(USL) charged at 5% through License fee on licensee of DOT which is fixed at 5% of adjusted gross revenue(AGR) i.e. the fund is financed by this sector only which has costs on the economy as has been seen in the past, the companies are demanding a decrease in USL.
It is very important to understand that taxes once introduced are very difficult to roll back as has been the stance of the government, also the point that when a certain fund is mandatorily paid, the fund will always have sufficient corpus to spend, if a tax is not levied the corpus of the fund would then become contingent on the government priorities.
Hence, a Tax is required to be levied keeping in mind that there are provisions to ensure the usage of the Fund.

HOW WILL THIS FUND ENSURE EMPLOYMENT, SKILL DEVELOPMENT OPPORTUNITIES AND DEVELOPMENT OF INDIGENEOUS COMPANIES?

To ensure employment and skill development opportunities it is very necessary for many players to enter the system, under the current license system(a bidding process where a benchmark price is calculated and the lowest bidder becomes the universal service provider) a dominant operator is formed which controls the operation in these areas, moreover the high taxes, duties and levies also make entry of new entrants difficult; of the levies a huge portion is the USL, entry of various players into the market coupled with the lower tax would also lead to research and development of new technologies in the sector.

Hence, Scope of subsidy should be expanded, Inclusion of small players should be there, not only the large, licensed players.

The Auction should not have rules that restrict small player entry.

To foster small players to set in the main cost of setting up the infrastructure should be shared and then there should be open access.

1. The DOT Consultation Paper which proposes to consider stakeholder comments on the reframing and consolidation of the legal framework for telecommunications in India is a welcome initiative.

2. The Consultation Paper in referencing various avenues for telecommunications growth and new technologies in Para 6, lists 5G and IoT. In our view a key technology which may spearhead telecommunications coverage and connectivity in a ubiquitous way is satellite communications. Any new legal framework must clearly set out the legal provisions applicable to the satellite communications sector and must be framed with a view to promote the growth of this sector as a vital player in India's telecommunications growth trajectory in the coming years.

3. Globally, there has been a surge in innovations in satellite communications and it is recognised as the future of broadband delivery. The new legal framework must encourage private sector participation in a liberalised manner to carry forward and realise the potential of this mode of delivery of broadband throughout India by augmenting satellite capacity available for the vital connectivity services that satellite communications provide.

4. The New Space Policy 2022 is a welcome step to tap the full potential of the space sector by promoting greater private sector participation in the satellite sector including in the manufacturing space. There must be a focus on promoting a competitive and level playing field for private players in the satellite communications space to enable its growth. This can be done by a consolidated legal framework governing the satellite communications sector. The legal framework must be simplified and have built in time bound procedures and clear guidelines on various aspects, including the licensing of space technologies for commercial applications and use of non-Indian orbital resources. There must be a single authority to which governs all aspects related to this sector so as to avoid confusion and delays.

5. The legal framework governing the satellite sector must be technology neutral and transparent so that such legal framework is stable in the face of various technological innovations. The proposed legal framework must provide sufficient legal certainty and clear guidance in this technologically evolving sector.

6. Global trends indicate that satellite communications is the next step in the evolution of the telecommunications space as is evidenced by advancements such as High Throughput Satellites and Low Earth Orbit Satellites. The satellite communications sector is pivotal in providing connectivity for various applications which are required for bridging the digital divide throughout India including remote/rural locations, therefore it is imperative to have a clear and specific legal framework to govern this sector.

Comments Submitted on behalf of Hughes Communications India Private Limited

ITI Promoting Innovation Worldwide

Date 01.09.2022

ITI Comments on "Need for new Legal framework governing telecommunications in India"

Respected Madam/Sir,

ITI – the Information Technology Industry Council[1] – appreciates the opportunity to respond to proposed questions in the Department of Telecommunications Consultation Paper, *Need for a new legal framework governing Telecommunication in India*. We are happy that Government of India is thinking about a modern and future-ready legal framework which addresses the realities of telecommunications in 21st century India. Through these comments, we hope to support the Government's development of such a framework that will realise these ambitious goals and bolster India as a destination for information and communications technology (ICT) investments.

We submit, keeping an eye towards international standardization, harmonization, and interoperability will provide India with a continued and enhanced global leadership role, a competitive edge with global networks, and the seamless deployment of future technologies that will further enrich India's economic and social prosperity.

As generations of standards covering Wi-Fi, cloud computing, machine learning, 5G, etc., continue to evolve, the telecom and information technology (IT) sectors will remain key for India to maintain and increase its global ICT leadership.

Spectrum Management

Technical Neutrality. Wireless and wireline technologies remain deeply intertwined. To achieve the greatest potential of internet-enabled communications, we encourage you to take a balanced approach to both licensed and unlicensed spectrum, and that any laws related to the use of ICTs or funds for deploying telecommunications networks remain technology neutral. Technical neutrality in granting funds for deployment will lead to the greatest coverage with lowest costs.

Licensed Spectrum. We congratulate you on the completion of your recent 5G auction and expected speedy rollout. It is estimated that there will be about 500 million 5G subscriptions representing around 39% of mobile subscriptions, with up-take encouraged by bundled services by the end of 2027. The projected values of the 5G-enabled digitalization revenues in India by 2030 range from USD 17 billion to USD 42 billion. 5G will enable solutions such as e-health, connected vehicles, more-immersive augmented reality and metaverse experiences, life-saving use cases, and advanced mobile cloud gaming, among others.

Unlicensed Spectrum. According to the Wi-Fi Alliance's report on *the Global Economic Value of Wi-Fi*, found that Wi-Fi alone contributes $131 billion in economic value to India today. That number will rise to $240 billion by 2025. The combination of modern technology and additional spectrum will help ensure Wi-Fi's value continues to grow in years to come. The advent of Wi-Fi 6 and access to unlicensed spectrum will enhance a suite of advanced applications.

Access to spectrum for new technological developments and global trends in Internet of Things (IoT), Short Range Devices, Wi-Fi, etc., along with other license exempt technologies, must be considered in the spectrum "mix." Delay in allocating spectrum for non-carrier related spectrum needs can hamper progress in the Indian electronics industry in terms of testing, bringing new products to market and meeting the needs for both exports and domestic production

Standards, Public Safety and National security

Accept International Standards for Testing. It is imperative that manufacturers of radio equipment and infrastructure can deploy secure, accessible, and affordable wireless telecommunication equipment. It is important to have a future-ready legal and regulatory framework to handle the exponential growth of mandatory product testing and certifications that equipment manufacturers must obtain before a product can gain access to the market.

We see lab accreditations based on international standards and the acceptance of test lab results of each other's countries as the best way to meet the demand, and in which the legal and regulatory frameworks are not more trade-restrictive than necessary to achieve government objectives to ensure that products that reach the markets are compliant with the rules of our respective countries. Manufacturers need assurances that accredited laboratories can meet the high demand so that they can bring products to market without undue burden, logistical problems, and test lab capacity bottlenecks.

Definition. Currently, the wide definition of 'telegraph' under the Indian Telegraph Act of 1885 brings ICT equipment and various consumer electronic products within the ambit of telecom and telecom equipment-related regulations. DoT in consultation with stakeholders should consider refining the scope and application of telecom equipment regulations to specifically regulate only core telecom products and distinguish between telecom companies/internet service providers and technology facilitators.

Simplification of Regulatory Framework

Legal Continuity. To maintain a clear directive without discordant rules leading to confusion and delay, we hope that this consultation will confer with other processes on AI[2], Cyber Security, Privacy[3], or other technology policies. A patchwork of laws with contradictory requirements will have the unintended effect of slowing India's technology leadership. For your reference, we have included links to ITI's work in the various policy areas.

Barriers to Trade. Any new regulatory framework for telecommunications should take into account GOI's commitments under existing trade agreements. Telecommunications equipment should be duty free according to India's World Trade Organization (WTO) Goods Schedule; however, the GoI currently places a 20% import tariff on telecommunications equipment. It is vitally important that any new legal framework ensure the restoration of duty-free telecommunications equipment pursuant to India's international trade obligations. As the GOI has expressed strong interest in connecting the entirety of its population and has focused on how to better deploy funds from the

Universal Service Obligation fund, removing this tariff will contribute to more efficient and cost-effective deployments.

The WTO's Technical Barriers to Trade (TBT) Agreement is an essential tool to address barriers to trade resulting from technical regulations. The TBT Agreement provides an appropriate framework for good regulatory practices, and we encourage India to adhere to its core commitments and principles, including notification to the WTO TBT Inquiry Point to ensure global stakeholder engagement.

Flexibility. India's regulations have historically been based around static infrastructure. As such cutting-edge technologies that are infrastructure agnostic have been slow to develop. Seamless integration of communications networks, applications, platforms and protocols means technology specific regulatory structures hamper innovation. With businesses becoming increasingly global with employees and customers across geographies, adapting telco regulation to remote work/work from home is essential to enabling business continuity. Therefore, moving towards a regulatory structure that is not based around one specific technology allows India to meet its future-ready regulatory framework goals. The government, in its own consultations, has focused on the benefits of unbundling the network and service provider layers. Unbundling will allow global connectivity for increasingly dispersed businesses and workforce, reduce operational overheads, and ensure an ease of doing business - for both service providers and customers.[4]

Unified License Limitations. Current regulations do not allow Internet Protocol (IP) and Public Switch Telephone Networks (PSTN) switching, which is required for many of the technologies that enable a mobile workforce. A new framework should allow innovative technologies utilizing unified communications solutions that allow businesses to compete globally and provide workers with more options to participate in the workforce.

Integrated platforms where data, voice, documents, and messaging are shared across devices are suffering under outdated approaches that prevent PTSN from interconnecting seamlessly with IP. It impedes services that contribute to a future ready business environment, such as VoIP and cloud-based conferencing services. In line with GOI's goals on converged technologies and in the spirit of One Nation – One license, DOT should provide national level authorization for Unified Licenses for Virtual Network Operators and allow the scope of UL to include interconnection between IP and PSTN.

We thank you for the opportunity to provide comments and look forward to working with you as you develop a future ready ICT legal framework.

Regards,

Katherine McAuliffe
Director of Telecommunications Policy
Information Technology Industry Council

Kumar Deep
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kdeep@itic.org

[1] The Information Technology Industry Council (ITI) is the premier global advocate for technology, representing the world's most innovative companies. Founded in 1916, ITI is an international trade association with a team of professionals on four continents. We promote public policies and industry standards that advance competition and innovation worldwide. Our diverse membership and expert staff provide policymakers the broadest perspective and thought leadership from technology, hardware, software, services, and related industries.

[2] https://www.itic.org/documents/artificial-intelligence/ITI_GlobalAIPrinciples_032321_v3.pdf
[3] https://www.itic.org/documents/india/FinalMarch-8-ITI-Letter-to-MEITY-on-India-PDPBFinalVersion.pdf
[4] https://www.itic.org/advocacy/global-benchmark-reports-on-the-ease-of-doing-business

STL's Suggestions/Recommendations
on
Consultation Paper released by DoT on 23-07-2022 regarding "Need for a new legal framework governing Telecommunication in India"

1. Indian Telecom Sector is governed mainly by the following Acts:
   (a) The ***Indian Telegraph Act, 1885.***
   (b) The ***Indian Wireless Telegraphy Act, 1933.***
   (c) The ***Telegraph Wires (Unlawful Possession) Act,1950.***
   (d) The ***TRAI Act,1997.***
   (e) The ***Information Technology Act, 2000.***

2. The Department of Telecom draws power primarily through the Indian Telegraph Act,1885 which is almost 137 years old. Telecommunication has undergone a sea change since then, thanks to the rapid development of technology to cater for the new age requirements. In case of India, we have seen the transition of telecom services being provided purely by Government (DoT), followed by PSUs (BSNL and MTNL) and now by the PSUs as well as the Pvt players. Post the notification of NTP-1999, with the inception of mobile services and Internet, entire Telecom scenario has undergone a sea change.

3. Though the Indian Telegraph Act 1885 is more than 137 years old, it has withstood the test of time; thanks to its versatility and broad-based approach-which enabled an orderly growth of telecom sector in our country. Very few countries in the World might have a similar versatile Act. The definition of 'Telegraph' in this act is very broad, encompasses all means of telecommunication, even the futuristic Free Space Optics for communications. Section 4 of the Act provides all necessary powers to the Government. It has allowed Telecom liberalization and privatization, etc.

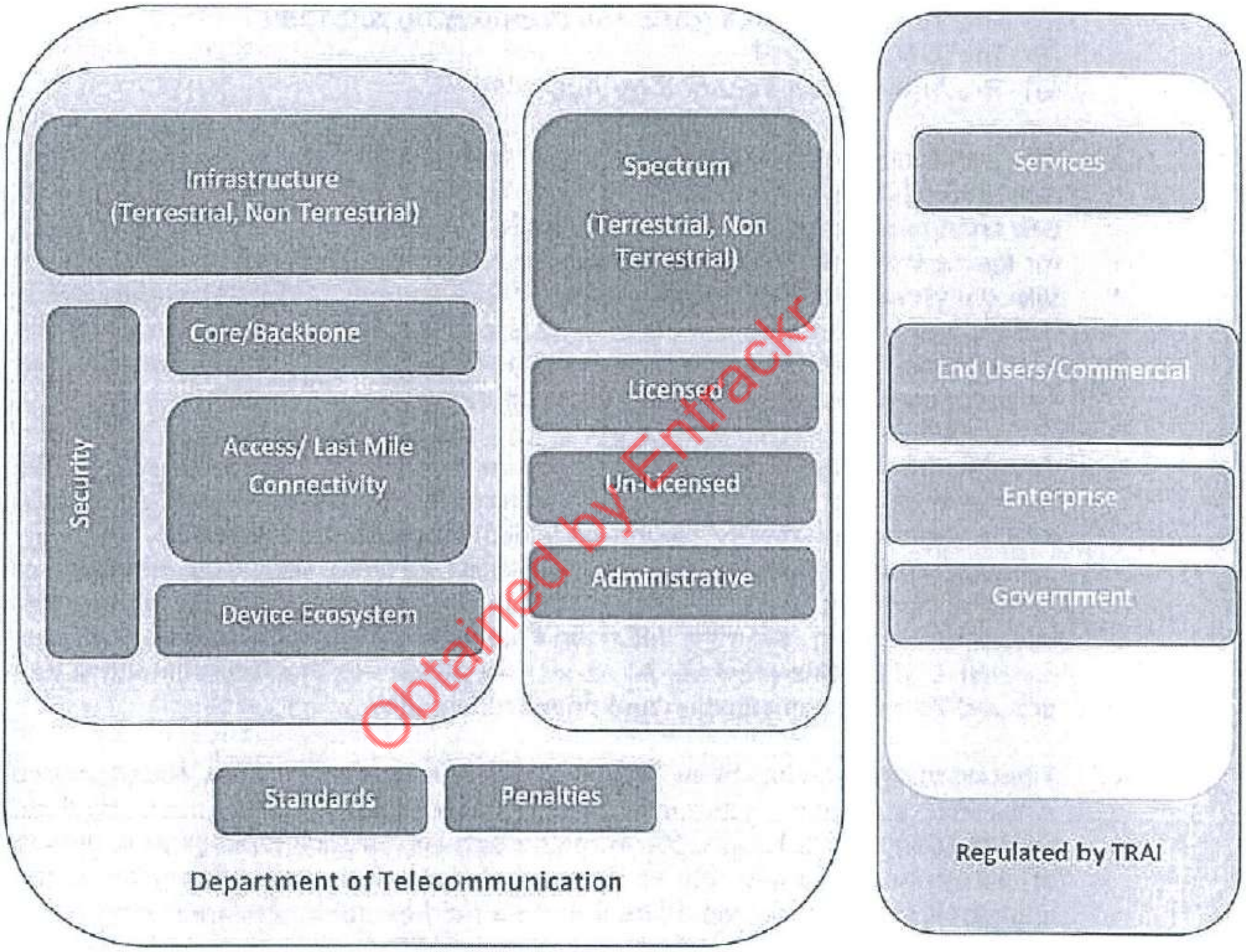
4. Telecommunication has been included in the "***Essential Services Maintenance Act,1981***"; also, being a strategic asset, Telecommunication has been identified as a National Critical Information Infrastructure. All the sectors/ engines of growth of our economy heavily rely on the digital connectivity, any disruption of the communication network would be therefore detrimental to the functioning of the nation. In the recent past, during the COVID-19 pandemic, it was the telecommunication network that enabled the logistic operations, health sector, education sector, economy, manufacturing etc to continue functioning.

5. It may however be noted that the word "Telegraph" has little or no significance in the modern times, hence it is suggested that the new/ revised Act may be called the "**Indian Telecommunications Act**".

6. It is suggested that the fundamental essence of the Indian Telegraph Act,1885 be retained, the proposed new Act should be enabling, short and simple. Details for specific activities/ aspects of different telecom services can form part of ***Rules*** that may be framed basis the requirements as it is much easier to amend the Rules, as compared to amending the Act. New Law should enable formulation of Rules for various services/ aspects. Also, the new act should be in sync with the

various other Acts, i.e. IT Act, proposed Data Privacy Act. The existing service rules should be amended along with the new law.

7. While it would be essential to examine the existing Acts clause wise, it is suggested that the Telecom Sector may be viewed under the following structure and broad enabling provisions created to ensure that each area is addressed in the proposed Act



8. Infrastructure: Enabling provisions for creation of Digital Infrastructure is mandatory for Telecommunication services. Since "Right to Digital Connectivity" has been proposed in the Act, it would be the responsibility of the Government to ensure that necessary digital infrastructure is created in a time bound manner. Government may on its part create suitable provisions in the Licensing conditions to ensure sharing of active and passive infrastructure, time bound permissions by local administrative authorities for creation of infrastructure in their jurisdiction. Standards of encryption and necessary security measures (physical as well as digital) can be covered under the Rules based on the latest standards and technologies.

9. Last mile access/connectivity: Access to last mile connectivity and availability must be without any discrimination, restriction, interference. Practices like blocking, slowing, or granting preferential data speeds or treatment of any content must be not allowed. In case there is a need for imposition of black-out of communication in specific regions for Internal Security reasons, LEA may request so to the head of Internal Security at the Central Government, who in turn would ensure that the same is done in a time bound manner and for the stipulated duration as per directions. Mandatory provisioning of the last mile connectivity in economically backward, geographically inhospitable, remote areas need to be factored in the license conditions.

10. Device Ecosystem: The definition of the communication device has been drawn from the 2008 Amendment of the IT Act, 2000. Going forward, with the emergence of new technologies like IoT, M2M communication etc- a generic definition such as "Trans-Receiver" for use on telecommunication network may be adopted. As regards the standards, protocols and Security is concerned- the act should state that the "*Device should conform to the relevant standards notified by the Government and International Certifying organizations*" and reviewed periodically.

11. Spectrum: It is pertinent to note that Spectrum is a finite natural resource; hence it needs to be employed judiciously for achieving Socioeconomic advantages for the country. In view of the foregoing, we suggest the following provisions in the proposed Act:

    (a) The Central Government may, grant any spectrum rights, licenses, authorizations, permits to any person or class of persons, or to all citizens by individual licenses or class licenses unconditionally or subject to such conditions, as the Central Government may impose and specify in the grant of the spectrum right, including conditions on the sharing and trading of radio frequency spectrum; and

    (b) Provided that the Central Government may exempt any frequency or frequency band(s) from Licensing requirements unconditionally or subject to such conditions as the Central Government may impose.

    (c) DoT should continue to be be the custodian of the entire RF spectrum up to 3000 GHz. Allocation of spectrum would be undertaken to various services based on the prevailing requirements and national interest.

    (d) To ensure non-cartelization/ colonization of RF spectrum, Quantum of spectrum allocated to the Licensees should be done in an equitable manner.

12. Services: At present, there are twelve Telecom Services being provided by the Service providers. As we move forward, several innovative services may evolve to meet the requirements; Government intervention/regulation of these services is not recommended. However, it is equally important to ensure that adequate Quality of Services (QoS) are provided to the users- Need for the Regulator to frame regulations and regulate the QoS will therefore be essential. In this regard,

the Regulator be enabled with the Quasi-Judicial powers to effectively discharge its role.

13. Penalty:Existing provisions of the Indian Telegraph Act, 1885 be retained with one recommendation that wherever feasible all Criminal Offences be converted to Economic/Commercial Offences.

14. Comments/Suggestions on the existing Telegraph Act:

Privileges of the Government:

(a) Section (4): No Change.

(b) Section (5): Rule 419 A of the Indian Telegraph Rule, 1951 regarding interception needs to be added (Notified on 08 Feb 2014).

(c) Section (6) and (6A): Needs to be deleted as no longer relevant.

(d) Section (7) and (7A): To be retained.

(e) Section (7B): The should be a provision for the complainant to approach the Apex court in case he is not in agreement with the Arbitrator. Therefore (7B)(ii) needs to be amended.

(f) Section (9): Already amended due to Indian Telegraph (Amendment) Act, 2003. A new section on the Telecom Development Fund(TDF) with following provisions may be added:

  (i) Section (9E): For the research and development of Indigenous Telecom Equipment and to encourage the local manufacturers, a Technology Development Fund be set-up under the relevant budget head of the Authority. Quantum of the Fund would be decided by the Government based on the necessity and availability of the funds.

Power to Place Telegraph Lines and Posts

(g) Section(10)(iv); Need to be amended. The line "*All persons interested for any damage sustained by them*" should be replaced by "A central Authority"; *the central Authority would thereafter transfer the compensation to the relevant entities upon application. Reasonable charges would be restricted only to restoration charges, notified by the Government and revised after every five years.*

15. Section (11) to (19): Provisions of RoW Rules, 2016 issued on 15 Nov 2016 as well as RoW Rules, 2021 and 2022 need to be included in the relevant sections. Rest No changes are recommended.

The Telegraph Wires(Unlawful Possession Act), 1950

16. Most of the Act deals with illegal possession of telegraph lines/wires. In the present-day context, very few sections are relevant. Nevertheless, some portion of the Act may be retained and modified to address the issue of illegal telephone exchange, illegal Internet Exchange points, illegal secondary switching points etc.

Relevant portions of the existing Act may be subsumed in the proposed Indian Telecommunications Act. Following sections may be deleted:

(a) Section (2): This section is centered around copper cables, whereas in the modern times copper wires have been replaced with new mediums, hence the same be suitably amended post consultation.

(b) Section (4), (4A): To be deleted as not relevant anymore.

(c) Section (5): To be deleted as no longer relevant.

(d) Section (6A) and (6B) may be modified and retained.

INTELSAT

1 September 2022

Department of Telecom
Ministry of Communications
New Delhi
India

Re: Intelsat Comments to DoT's Consultation on the "Need for a new legal framework governing Telecommunications in India"

Intelsat, the leading provider of fixed-satellite services ("FSS") worldwide, appreciates the Department of Telecommunications ("DoT") efforts in developing a new legal framework, towards India's vision of making India a Digital Superpower and in taking steps towards ease of doing business.

Intelsat provides diversified communications services to leading media companies, fixed and wireless telecommunications operators, data networking service providers for enterprise and mobile aeronautical, maritime and land communications service providers, and to multinational corporations and ISPs.

Intelsat would like to thank the DoT for the opportunity to provide comments on the Consultation Paper on the " Need for a new legal framework governing Telecommunications in India" and offers the following comments for DoT's consideration.

1. Ease of doing Business: Single online portal

Intelsat suggests that a single on-line portal will assist towards DoT's objective in ease of doing business. The Online portal should eliminate all the paperwork and hard copies to be submitted and will provide access to all the other governmental agencies portals, which will expedite any clearance required from any other department.

TRAI in its "Recommendations On Ease of Doing Business in Broadcasting Sector", dated on 26 February 2018, had provided with specific examples that will simplify the process of obtaining permissions and ensuring procedural transparency with respect to the licensing of satellite capacity and earth stations. Intelsat endorses that the application process to be online with clear timelines, and the licensing progress to be available online. This can be done through a Single window process on an online portal.

An example of a procedure simplification through the online portal, is the implementation of a single SACFA clearance. Once a site has been given a SACFA clearance, then it may be deemed cleared for future services and requiring the site to be SACFA cleared for each new antenna or service will not be required. With new satellite constellations going to be operational soon, the process of SACFA clearance for each site will be a cumbersome process and will delay the service provisioning to the end consumer.

2. Simplification of Additional Sites in WPC and NOCC Permissions

As mentioned in Point 11 of the Consultation Paper, to ensure regulatory certainty a simplification of the licensing process is required for the WPC and NOCC permissions.

More specifically, the WPC permissions issued to the teleports should be of 10 years coinciding with the license permission of the channel, any additional channel on the same transponder and frequency should not necessitate a new WPC permission, but a simplified procedure of self-declaration and update of the WPC license should apply. This will be in line with the new satellite technologies that allow for efficient use of the bandwidth for Standard Definition channel and High Definition Channel.

Similarly to the WPC permissions, NOCC permissions for a transponder on a certain frequency should not require an additional permission if any service or channel is added to or removed from the same transponder. A simplified licensing process where the service provider can add the channels in the online portal and update the NOCC permission should be foreseen. The current process of submitting the link budgets in hard copies is burdensome and delays the licensing process. Intelsat recommends the DoT to consider establishing a simple online tool, through a common portal for the DoT and NOCC, to insert the link budgets.

3. WPC Charges for Satellite Bandwidth

We appreciate the step taken to abolish the NOCC charges for the service providers. The current WPC charges being paid for the satellite bandwidth (Rs 21 lac per 36Mhz transponder per annum) should be adjusted to reflect the administrative costs. Lowering the WPC charges will help service providers to be competitive and will spur growth and can make India an uplink hub for many international channels as it is uniquely placed to carry the channels from South Asia to West Asia and Europe.

4. Amendments in the Parameters of Bandwidth Use

Currently the bandwidth allocated to the service provider/ earth station is fixed with specific Modulation, data rate, FEC etc. The service providers should be allowed to efficiently use the bandwidth available by using the most efficient modulation, data rate and FEC and they should declare the same on the online portal so that the information is updated in real time.

5. Permissions for the Satellite Use

TRAI in Sections 4.8 and 4.9 of its Recommendations in Ease of doing business in the Broadcasting and Telecommunications Sector advised the following:

"D: Frequency allocation and grant of WOL by WPC, and permission to operationalize broadcast services by NOCC

4.8 The Authority recommends that

a) WPC should allocate the spectrum for commercial satellite usage as and when there is a demand for the same from service providers in a time bound manner.

b) The WOL should be valid for a period equivalent to service license/ permission period.

c) The service providers should continue to pay requisite fees to WPC on annual basis; and the same should be paid at least 60 days before the due date to ensure continuity of the license. A condition should be prescribed in the WOL that any delay in payment of requisite fees shall lead to penalties and cancellation of the applicable license. [

E: Time frame to grant permissions by MIB and WPC

4.9 The Authority recommends that:-

a) MIB should setup an integrated online portal for broadcasters, teleport operators, and distributors of TV channels (DTH operators/HITS operators/MSOs) which should facilitate the filing of applications, processing in MIB, DoS and DoT, tracking of status of applications, payments, frequency allocations, endorsements, permissions, licenses, registrations, and renewals with common database. Preferably, this portal should be integrated with other eGovernance systems like Bahartkosh 17 portal, e-Office application etc. Access to the portal should be provided to the Authority also for information and analysis."

Intelsat recommends that the DoT considers the above TRAI recommendations, as the implementation of the above will facilitate expansion of the broadcasting and telecommunications sector.

6. Flexibility on the Option of Satellite Capacity Providers and Agreement Term

Intelsat supports the flexibility of the ground service provider to choose the Satellite capacity provider and the term of their agreements. The DOT and the DOS should publish a list of permitted satellites authorized to operate in India and this list should be updated regular intervals.

Additionally, the service providers should be allowed to sign long term capacity agreements. This will be in line with the TRAI's "Recommendation on Accelerating Growth of Internet and Broadband penetration", dated April 29, 2004, and TRAI's "Recommendation on Delivering Broadband Quickly : What do we need to do?", dated 17th April 2015, where TRAI emphasizes the role of the satellite capacity for accelerating the penetration of the internet and broadband in the country.

We have seen during the recent pandemic that the Internet penetration has profound impact not only on the governance, but also on education, provision of essential services and everyday activities. The above, along with the fact that India is leading the digital financial inclusion, requires facilitating a robust back bone and the provision of satellite capacity as key to ensure internet penetration.

Policies, such as the "Open Sky Policy" and the long-term contacts will benefit the Indian service providers as they will ensure business stability and increase competition and consumer welfare.

7. Protecting Satellite Spectrum and Orbital slots

A major concern of the satellite capacity providers and the service providers is the continuity of the availability of the spectrum and protecting the spectrum for satellite use. India is a geographically diverse nation with diverse terrain, which necessitates the provision of satellite service in remote areas that may not be covered by the terrestrial or ground networks. A long-term policy defining the protection of satellite spectrum is required and will help the industry plan its resources accordingly.

The provision of satellite service is governed by the ITU principles and the international treatises, thus it is important that those are respected and honored. A regulatory framework that does not respect the ITU rules may affect the provision of the capacities over India and may impact the availability and affordability of services.

8. New Generation of Equipment and Technical Standards

TEC and BIS upgrade the technical specifications and requirements along with the technological developments. However, there is a need for the process of adaptation of the technical specifications and standards to be more agile, as to keep pace with the new equipment technologies. For instance, TEC and BIS should note that the new antennas are getting more efficient and there is shift from Parabolic to flat phasor array systems, and thus they should remove any antenna size or type limitations that will impede the deployment of the new generation of antennas.

We respectfully request the DoT to consider the abovementioned points during the development of the new licensing regime. We remain at your availability for any supplementary information.

The Dialogue™

INFORM ENGAGE IDEATE

Comments on Consultation Paper on 'Need for a new Legal Framework governing Telecommunication in India'

Ayush Tripathi[1], Kamesh Shekar[2] and Bhavya Birla[3]

1st September, 2022

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[1] Ayush Tripathi is a Programme Manager - E-commerce, Payments and Telecom Vertical at The Dialogue

[2] Kamesh Shekar is a Programme Manager - Privacy and Data Governance Vertical at The Dialogue.

[3] Bhavya Birla is a Research Associate at The Dialogue

1. Introduction

At the outset, we would like to congratulate the Department of Communications, Government of India, on the consultation paper on **'Need for a new legal framework governing Telecommunication in India'**. The paper adopts a forward-looking approach with a key focus on simplifying the regulatory framework and reforming right of way and spectrum management. Further, the reforms suggested for the Universal Service Obligations Fund are also commendable. Previously, The Dialogue authored a paper in collaboration with the Associated Chambers of Commerce and Industry of India (ASSOCHAM) in 2021, titled "Enabling a Trillion Dollar Digital Economy: Interdependent, Interconnected and Digital". The report delved into the issues and challenges in the telecom sector and recommended the following:

A) Alleviate the financial stress: Due to the burgeoning debt on this sector, the paper recommends regulatory intervention to uplift ARPU, reduce the regulatory levies on the sector, address issues relating to GST such as accumulation of credit and review the definition of Adjusted Gross Revenue (AGR).

B) Addressing the digital infrastructure challenges: Investments in infrastructure need to be enhanced, and universal last-mile connectivity needs to be promoted. The government must proactively intervene to reduce the barriers to investments in the telecom sector, ensuring the sector gets ample support to drive future investments

C) Adopt a balanced and sustainable approach for data privacy and security: A principled based approach to privacy in line with the test of proportionality, equity and consent.

D) Light-touch approach to regulation: A light-touch approach that focuses on the main principles and leaves specific compliance to ex-post measures and general laws relevant to the sector. Digital technologies are changing constantly, and a responsive approach instead of an ex-ante rigid approach can better protect the interests of all stakeholders, including citizens, businesses and the government, while also ensuring flexibility to regulate such changing technologies in the future.

Taking inferences from the above-discussed study and other related work, in this document, we submit our comments to the consultation paper on the "Need for a new legal framework governing Telecommunication in India" floated by the Department of Telecommunications. Our comments in this document is mapped across the different sub-headings discussed in the consultation paper. Section 1 discusses some of the key recommendations that will help DoT in its objective of revamping regulations in the telecom sector. Section 2 discusses the aspects to be considered and addressed as part of the new regulation such that it is designed to ensure maximum growth. In section 3, we emphasise the importance of a single framework or a single window clearance approach for the industry to minimise the cost. Section 4 provides our recommendations to enhance the spectrum management system. In section 5, we discuss the steps to be taken in addition to the RoW reform in order to enable growth and greater coverage across the country. Section 6 suggests the scope of USOF can be increased by incorporating some of our recommendations. Finally, in section 7, we take this opportunity to suggest an overhaul of the legal framework of surveillance to keep up with the pace of technological developments.

2. Key Recommendations

References from the Consultation Paper	Our Recommendations
What does the new law need to address?	
Para 7. A new law on telecommunication needs to aim at establishing an enabling future-ready framework for the development of the telecommunication sector and deployment of new technologies. Such a law needs to consolidate the existing laws governing the telecommunication sector while keeping in view global best practices. For this, a careful review of laws and best practices in other jurisdictions will also be needed.	• A light touch regulatory approach is the need of the hour telecom market. Reducing compliance burden and regulatory certainty should be one of the key objectives of this law. • A single window clearance system needs to be developed in order to reduce cost and compliance time for the entities. • Enabling competition and democratising the telecom market sphere should be one of the key objectives of the new framework.
Simplification of New Framework	
Para 10. There have been rapid advances in telecommunication technology and the corresponding proliferation of licences, registrations, authorisations, permissions etc., in the telecommunication sector. The exclusive privilege of the Government to do things necessary in the context of telecommunication to provide telecommunication services, and establish and maintain telecommunication networks and infrastructure, is well recognised under the laws of various jurisdictions. A new law needs to build upon this framework.	• Merge all the existing regulations into a single legislation to mitigate the burden on the telecom sector. • Ensure minimal disruption and continuance of licences issued under the current regime. • Reduce the licence fees from currently 8% to less than 3%, which can help the telecom sector alleviate the financial distress.

Spectrum Management	
Para 15. At present, spectrum assignment is done through a combination of policies and court orders. A new law needs to bring in regulatory clarity and lay down a specific legal framework. The principle needs to be that spectrum will be assigned to best serve the common good and enable wide-spread access to telecommunication services.	• The spectrum pricing formula needs to be revised in order to relax the pressure on telecom operators. • The government should consider having a comprehensive system of complaint redressal for the customers, possibly through the creation of an ombudsman post for this purpose. • Revisiting the definition of Adjusted Gross Revenue to exclude non-telecom related incomes.
Right of Way (RoW)	
Para 19. A new law needs to provide a robust regulatory framework to obtain the Right of Way in a uniform, non-discriminatory manner for the establishment of telecommunication infrastructure. Such a law also needs provisions to create an effective dispute resolution framework relating to the Right of Way.	• Focussed Fiberisation of Base transmitter Stations across the country to improve stability and speed of mobile networks. • Uniform application of RoW norms across states in order to reduce regulatory uncertainty.
Para 20. In line with the vision of PM Gati Shakti initiative, the new framework needs to incorporate provisions for establishing common ducts and cable corridors in infrastructure projects to ensure integrated development of infrastructure.	• A standardised 'Dig only once' policy to incorporate the designing of utility ducts with implied RoW permission for Telecommunications
Expanding the scope of the Universal Service Obligation Fund (USOF)	
Para 24. The new framework also needs to consider ways in which to overhaul the current Universal Service Obligation Fund	The USOF currently holds more than 50% of all funds raised through its 5% levy on telecom companies since it came into force. This fund

with the wider concept of a "Telecommunication Development Fund". This can address the larger public purpose of ensuring the delivery of universal telecommunication service to underserved rural and urban areas, research and development of new technologies and promoting employment and training activities. This can enable the growth of indigenous companies in the technology space.	can be used to house the wider concept of a "Telecommunication Development Fund" by incorporating the following recommendations:- • Having a light touch regulation of the industry and potentially reducing the levy from 5% to under 2% • Using USOF has an Investment fund for incubating indigenous technology development • Decentralising the development of ICT infrastructure funded by the USOF
Standards, Public Safety and National Security	
Para 26. A new law needs to have appropriate provisions for addressing situations of public emergency, public safety and for taking measures in the interests of national security.	Many jurisdictions have revamped/enacted surveillance legislation[4] to cater to recent technological developments. Therefore, India must pick inferences from various jurisdictions and enact more comprehensive surveillance legislation. On that note, we believe the below-discussed levers and pointers may form a sturdy surveillance law to achieve an empowered citizenry for the country. • Clearer definitions • Robust accountability & oversight • Having technical and administrative safeguards • Constituting a robust redressal mechanism

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[4] For instance, in the UK, the government enacted the Investigatory Powers Acts, 2016, which applies to intelligence agencies to ensure powers and principles fit the digital age.

3. What does the new law need to address?

The department of telecommunication's aim that the new law should enable a future-ready framework is very well appreciated. The importance of telecommunication infrastructure cannot be stressed enough, and for it to function effectively, the laws must take into account the burgeoning debt of telecom companies. It must be emphasised that telecommunication services enable a range of possibilities - digitising industries such as agriculture, health, education, startups, small & medium industry, digital payments and even online job portals. The role of telecom in keeping businesses and households running even in the wake of the COVID-19 pandemic underlines the importance of this sector as foundational to the use of digital and IT tools across a range of industry verticals.

There are 1166.30 million telecom subscribers, among which 1142.09 million are subscribed to wireless, and 24 million are connected through a wireline subscription by the quarter ending in March 2022. The average wireless data usage per subscriber in a month is at 15.80 GB – up from 330 million subscribers in the quarter ending June 2016, using 0.16 GB (GSM+CDMA) per subscriber per month. The value of the Indian internet economy was $125 billion (Rs. 9 Lakh Crore) in April 2017 and is expected to hit $800 billion in FY 2030. To achieve the goal of a trillion-dollar digital economy by 2025, India needs an unwavering focus on the telecom sector, especially wireless technologies, the cornerstone of the digital economy.

The telecommunication and digital sector became a critical asset for Indians in 2020 with a global pandemic severely disrupting business as usual. The COVID-19 outbreak revealed how global emergencies could create an explosive and unforeseen demand for data and digitisation of work. The pandemic forced more and more people to work remotely in order to flatten the growth curve of the epidemic. This resulted in a sharp growth in online traffic, both on account of the large adoption of work from home strategy by many companies, along with a sizable increase in online entertainment to make the most of the quarantine during lockdown periods.[5]

Streaming services and social media platforms have also contributed massively to the growth in data traffic, placing a huge demand on mobile networks. This pandemic accelerated the rate of digitisation which may have lasting impacts on our life and the economy, which prompted a transformation in work dynamics for most firms. Local businesses are swiftly reshaping their business plans to avoid being disproportionately hurt. Rising screen times raise the average monthly wireless data usage per consumer, and our telecom infrastructure needs to be enhanced in order to tackle this phenomenon. It is the commitment and urgent actions to promote the long-term growth of the telecommunications sector that are required to improve the health of the industry and the investments in the infrastructure.[6]

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[5] Ayush T, Maanya V, Trisha P, (2021) Enabling a Trillion Dollar Digital Economy: Interdependent, Interconnected and Digital, The Dialogue and ASSOCHAM, Available at: https://thedialogue.co/wp-content/uploads/2021/02/Enabling-a-Trillion-Dollar-Economy-The-Dialogue.pdf

[6] *Ibid*

Regulations form a crucial aspect of the smooth operations and running of a business. Good regulations are essential for creating an environment for businesses that reduces risk, promotes confidence, supports employment, and boosts manufacturing, exports, trade, and foreign direct investments.[7]

As mentioned earlier, due to the increased usage, the telecommunication sector, which is already struggling, has been under more pressure than ever. **The amount of compliance burden and regulatory uncertainty should be one the key concerns that the new law should address.** Mobile operators have to submit around 1500-2000 compliance requirements in a year[8]. A **light touch regulation** with **effective administration,** as envisaged by the Communications minister Ashwini Vaishnaw should be the objective of this law.

The telecom sector is already in cumulative debt of INR 6 Lakh Crores[9], and there is a need for significant reforms in this sector in order to revive it. This level of indebtedness calls for a comprehensive review of the sector's regulatory environment, including the high regulatory levies, fees and taxes that are available in this sector. Therefore, it is important for the government to revisit their policy structure and make sure that it is designed to ensure maximum growth.

Another aspect that the law should take into account is the ease of doing business in the telecom sector. There are significant entry barriers in this sector which are hindering its growth. Apart from compliance, the concentration of the user base among a few players in this sector has also been one of the reasons for the lack of emerging players in the sector. There is a need to leverage the existing network to bring in new players in order to increase competition in the market.

Moreover, regulatory overlaps with the telecom regulatory authority of India are another crucial aspect that has to be looked into. Since TRAI is an independent statutory body, there are overlaps of jurisdictions with other regulators. There is a need to create an enabling framework which demarcates the jurisdiction of TRAI.

Recommendation:

1. A light touch regulatory approach is the need of the hour for the telecom market. Reducing compliance burden and enhancing regulatory certainty should be one of the key objectives of this law.

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[7] Consultation Paper on Ease of Doing Business in Telecom and Broadcasting Sector (2021), TRAI, Available at: https://www.trai.gov.in/sites/default/files/CP_08122021.pdf

[8] Rathee K., Dept of Telecommunications panel to suggest reform measures in business-friendly move, Financial Express, March 22, 2022 Available at: https://www.financialexpress.com/industry/dept-of-telecommunications-panel-to-suggest-reform-measures-in-business-friendly-move/2467274/

[9] Aulakh G., Telecom Debt to touch ₹6 Trillion, Live Mint, August 2, 202, Available at: https://www.livemint.com/industry/telecom/telecom-debt-to-touch-6-trillion-11659462460650.html

2. A single window clearance system needs to be developed in order to reduce cost and compliance time for the entities.

3. Enabling competition and democratising the telecom market sphere should be one of the key objectives of the new framework.

4. Simplification of the Regulatory Framework

Broadly, the market for the telecom sector can be categorised under three broad heads, i.e. Wireless, Wireline and Internet services. As mentioned in the consultation paper[10] as well, currently, the telecom sector is regulated through the Indian Telegraph Act, 1885, Wireless Telegraphy Act,1933, Telecom Regulatory Authority of India Act, 1997, Information Technology Act, 2000 and other circulars and notifications issued by the Department of Telecommunications. Further, this sector is regulated by the Ministry of Communications, Department of Telecommunications, Telecom Regulatory Authority of India, and Ministry of Information and Broadcasting. We welcome the approach towards simplification of the regulatory framework as it is the need of the hour for the telecommunication industry.

The licensing regime in the telecom sector saw a massive shift with the introduction and implementation of the 'unified licence regime'. The unified licence regime has been implemented primarily with the objective of 'one nation, one licence', as envisaged under the National Telecom Policy - 2012 (NTP 2012). It replaces the earlier regime where the players were required to obtain a separate licence for different telecom services in India, such as internet services, national long-distance (NLD) services, international long-distance (ILD) services, etc. This was a step in the right direction for creating a unified licensing regime. However, one of the key issues was the official fees that come with it. The charging heads have been defined separately under the unified licence with different limits for entry fees, net worth, paid-up capital, bank guarantees and processing fees. In addition to the prescribing minimum net worth of the companies availing the service and furnishing bank guarantee, the authorities also levy 8 per cent of the Adjusted Gross Revenue charged annually from the service provided, which includes a licence fee of 3 percent and Universal Service Obligation fee of 5% of AGR. In any country, the licence fee is not more than 3 per cent. There is a need to revisit the licence fee and amend it to make it more investment friendly.

As mentioned above, the sheer amount of regulation in the telecommunications sector is also a cause of concern. Every regulation brings with itself several compliance burdens, which increases the cost and time of the entities to comply with each law. A single framework or a single window clearance approach is important for the industry to minimise the cost.

The goal of the consultation paper to simplify the regulatory framework to achieve certainty and bring more investment is laudable. However, it will only be achieved by a light-touch approach to regulation. The regulatory framework should offer support to the business entities in coming out of the debts and ensuring new entities are entering the market.

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[10] Consultation Paper on "Need for a new legal framework governing Telecommunication in India', Department of Telecommunications, Available at: https://dot.gov.in/sites/default/files/Extension%20of%20time%20-%20Consultation%20Paper%20and%20Notice.pdf?download=1

Recommendation:

1. Merge all the existing regulations into a single legislation which is aimed at lifting the burden on the telecom sector.
2. Ensure minimal disruption and continuance of licences issued under the current regime when the new law is implemented.
3. Reduce the licence fees from currently 8% to less than 3%, which can help the telecom sector alleviate the financial distress.

5. Spectrum Management

The profitability of the telecom industry in India has declined over the past 4-5 years. Although tariffs (which are the revenue for the telecom industry) have been reduced, there is an increase in the cost to the mobile operators. Revenue has reduced, and expenditure has gone up, leading to a reduction in the margin of profits. This means that customers get better services at lower tariffs and lower rates, caused by market disruptions spearheaded by certain mobile operators.

About 30% of the revenue of telecom operators is paid towards spectrum charges - which include annual fees. The spectrum pricing formula needs to be revised in order to relax the pressure on telecom operators. With an expansive customer base in this decade, services provided to customers in current times are varied and require more data - and therefore, telecom operators require access to larger amounts of spectrum. The existing mechanism is based on per megahertz, which does not allow telecom operators to address the increased demands of customers. Other areas of focus include infrastructure creation (which includes laying of optic fibre) and quality of services. Tier II and Tier III cities still suffer from poor connectivity and unreliable internet connectivity. The government also needs to have a comprehensive system of complaint redressal for the customers, possibly through the creation of an ombudsman post for this purpose.

Spectrum auctions have been mandated by the Supreme Court to ensure transparency in allocation; however, the approach to determine the reserve prices of spectrum needs to be revisited, as is evident from the amount of spectrum left unsold in successive auctions. The government should look at raising revenues from the earnings of the telecom companies rather than from the input costs. High reserve prices have caused several auctions to fail, leaving valuable spectrum idle.[11]

Besides the high spectrum auction costs, the government levies in the telecom sector, estimated to be 30 percent of their revenues, are among the highest in the world.[12] The Department of Telecommunications (DoT) levies three kinds of fees and charges: (i) initial entry fee, which is non-refundable, (ii) annual licence fee, which includes a contribution to universal service obligation; and (iii) spectrum usage charges.

The Universal Service Obligation Fund (USOF), set up to expand networks in rural and remote areas, needs to be reviewed as nearly $ 6.7 Billion (₹50,000 Crore) of this fund lying unutilized, while a major improvement in access to telephony and internet across India is driven primarily by private investment. The level of indebtedness calls for a comprehensive review of the sector's regulatory environment, specifically including the high regulatory levies, fees and taxes and the spectrum charges that are imposed on this sector. Therefore, it is important for the government to revisit their policy structure and make sure that it is designed to ensure maximum growth.

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[11] Ayush T, Maanya V, Trisha P, (2021) Enabling a Trillion Dollar Digital Economy: Interdependent, Interconnected and Digital, The Dialogue and ASSOCHAM, Available at: https://thedialogue.co/wp-content/uploads/2021/02/Enabling-a-Trillion-Dollar-Economy-The-Dialogue.pdf

[12] *Ibid.*

The Spectrum Usage Charge (SUC), a legacy of the old regime when spectrum was given administratively, is anomalous since the telecom operators have been buying access spectrum in auctions ever since 2010. The burgeoning debt of the telecom sector is a matter of great concern and needs to be dealt with expeditiously and effectively. TRAI financial reports have been showing a consistently declining general revenue of the industry as well as a falling AGR. The AGR judgement has exacerbated this problem further. There is a need to look into the definitional aspects of AGR again.[13]

Recommendation:

1. The spectrum pricing formula needs to be revised in order to relax the pressure on telecom operators

2. The government should consider having a comprehensive system of complaint redressal for the customers, possibly through the creation of an ombudsman post for this purpose.

3. Revisiting the definition of Adjusted Gross Revenue to exclude non-telecom related incomes

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[13] *Ibid.*

6. Right of Way (RoW)

Right of Way norms have currently held up 500 telecom/optical fibre projects as there is a lack of regulatory harmonisation and infrastructural interoperability in place that has caused such a magnitude of projects to be held up. While a bulk of these held-up projects are related to defence land, either in border areas or cantonments, RoW issues have continuously been impediments even in private lands.

An example of the regulatory disharmony in place can be seen in the levy of 10% of the land's market value being sought by the roads ministry from the telecom ministry or the other levies imposed by the ministry for railways, forest and the environment being imposed for a platitude of reasons, all culminating in the halting of telecom projects.[14]

However, amendments to the 2016 Right of way Rules passed in August 2022[15] ease up multiple issues that have plagued the discourse between telcos and the DoT. The 2022 Amendment brings a host of changes that the telecom industry has been demanding for a long time, namely:-

1. ***Rationalisation of charges:*** The government has removed the administrative fee charged by the Central government for the establishment of poles on land owned/controlled by it. For State/UTs, the fee will be limited to ₹1,000 per pole. The fee for laying overground optical fibre shall be limited to ₹1,000/ Km. These are significant steps in the right direction as companies have argued that they have had to pay upwards of a 1000% over the ₹1,000/ Km to municipalities for their projects and have for long pleaded for uniform rates and standards.[16]
2. ***Faster clearance of applications:*** The government has proposed the Gati Shakti Sanchar Portal of the Ministry of Communications as the single window clearance system for RoW applications in the future. The Telecom Minister has also stated that the approval timelines have been reduced drastically from 100 days to just 22 after the portal was introduced.
3. ***Removing government approval for building infrastructure on Private properties:*** The 2022 amendment removed the need for taking consent from the government when building infrastructure on private properties.

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[14] Vishnoi, A. (2022 August 29) *Right of way rules on cards for public projects*, Economic Times. Retrieved on August 30, 2022, from https://economictimes.indiatimes.com/news/india/right-of-way-rules-on-cards-for-public-projects/articleshow/93840036.cms

[15] Ministry of Communications (2022 August 17) *Indian Telegraph Right of Way (Amendment) Rules, 2022*. Retrieved on August 30, 2022, from https://dot.gov.in/sites/default/files/RoW2022_0.pdf?download=1

[16] Abbas, M. (2021 February 20) Trai to release recommendations for Right of Way permissions, Economic Times. Retrieved on August 30, 2022, from https://m.economictimes.com/industry/telecom/telecom-news/trai-to-release-recommendations-for-right-of-way-permissions/amp_articleshow/81121302.cms

While the 2022 amendment aims to bring necessary reforms to RoW norms in the country, there are additional steps that can be taken in order to enable growth and greater coverage across the country.

1. *Focussed Fiberisation of Base Transceiver Stations (BTS)* - Currently, the government estimates that 35.11% of Telecom Towers/ BTSs have undergone fiberisation as of June 2022.[17] This is up by 4.11% from 2020, however still relatively very low compared to global standards. The fiberisation of sites is integral to the goal of providing stable access to the internet as envisioned under the National Digital Communications Policy 2018 (NDCP).
2. *Uniform application of RoW norms:* The uniform application of RoW across states is a foundational hurdle that needs to be resolved as the RoW permission is granted by the state governments (e.g. via local authorities like municipalities) in return for a fee. In many cases, these charges have been argued to be disproportionate, and RoW permissions are, as a result, delayed as local authorities follow their own interpretations and processes while granting such permissions. Thus, a uniform application of norms is crucial to reduce delays.[18]
3. *A standardised 'Dig only once' policy to incorporate designing of utility ducts with implied RoW permission for Telecommunications:* Standardising utility ducts for telecommunication projects will perhaps reduce significant strain on RoW requests as ducts are already in place for the fiber to be laid. Such a policy will also enable the fiberisation of sites at a far more efficient pace. Such a policy lays the infrastructural foundation for future modernisation plans as well.

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[17] Minister of State for Communications (2022 July 22) *Progress of National Broadband Mission*, PIB. Retrieved on August 30, 2022, from https://pib.gov.in/PressReleseDetailm.aspx?PRID=1843752

[18] GSMA (2020 September) *Rights of Way (RoW) in India: A submission from the GSMA relating to India Mobile Sector*. Retrieved on August 30, 2022, from https://dipa.co.in/reports/GSMA%20Paper%20on%20RoW%20Sep'2020.pdf

7. Expanding the scope of the USOF

The Universal Service Obligation Fund (USOF) was formed by an Act of Parliament and established in April 2002 under the Indian Telegraph (Amendment) Act 2003 (further amended in 2006), to provide financial support to telecom services in order to make them serve commercially unviable rural and remote areas of the country. USOF raises funds through the contentious Universal Service Levy (USL), which is 5 percent of the Adjusted Gross Revenue (AGR) of Telecom Service Providers. (TSP)

The funds collected by the levy are held in the Consolidated Fund of India (CFI) and are disbursed post-parliamentary approval. As of 30th June 2022, the fund held INR 59734.97 crore, which is above 50% of the funds collected by the USOF since coming into force. The fund and the objective being sought to be achieved are characteristic of the welfare state that India has presented itself being on multiple fronts; however, despite the multitude of projects being funded by the USOF, the disbursement of funds and the quality of work being outputted by the projects have been far behind the expertise curve that private telecoms have achieved in remote areas.

An example of this can be found in the work of BSNL in building infrastructure in LWE areas that currently only support 2G services that have become obsolete over time as internet usage and penetration in India have rapidly risen. They were granted INR 2,426 crores in April 2022 to modernise their infrastructure to support 4G services.[19]

There has also been criticism of the 5% USL applicable on TSPs as companies have stated that the levy is higher relative to other countries and the disbursement of the levy has been arbitrary. The argument is based on the disbursement of USOF funds disproportionately to public companies such as BSNL and MTNL in October 2019, when the Union Cabinet approved a Rs 70,000-crore revival package for the financially stressed public companies, which included a voluntary retirement scheme (VRS), asset monetisation and allocation of 4G airwaves.[20]

TSPs argued that such disbursement of funds, especially when private companies are the largest contributor of levies to the fund, reduces trust between the government and private bodies. Critics of the levy further argued that the government must reconsider its levy and the collection of the same for a few years as they have surplus funds under the USOF, and a temporary halt on the levy would enable private TSPs to manage their AGR dues and even stay afloat after taking a hit over the pandemic and the declining trend in revenue for certain businesses.[21][22] Contentions that such a move would better align DoT with National Digital Communications Policy 2018 (NDCP) of providing affordable and quality services to the masses have also been raised.

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[19] ET Bureau (2022 April 27) *Naxal- Hit areas cross 10 states to get 4G services now*, Economic Times. Retrieved on August 30, 2022, from https://m.economictimes.com/news/economy/policy/cabinet-clears-rs-2426-crore-to-upgrade-2g-mobile-sites-in-naxal-hit-areas-to-4g/articleshow/91126554.cms

[20] Minister of State for Communications (2022 July 22) *4G and 5G Licenses to BSNL and MTNL*, Press Release by the Ministry of Communications. Retrieved on August 30, 2022, from https://pib.gov.in/PressReleasePage.aspx?PRID=1843751

As has been envisioned by the consultation paper released by the DoT and the Additional Secretary of DoT[23], we believe the scope of USOF can be increased by incorporating the following suggestions

1. ***USOF as an Investment Fund:*** As has been envisioned by the present Additional Secretary V.L. Kantha of the DoT, the idle funds under USOF can be better utilised when a determined percentage can be redirected for indigenous technology development.[24] Funding for projects has already been introduced[25] but the same can and must be upscaled in order to increase our indigenous capabilities, especially when battery changes for tower sites are still dependent on Li-ion battery imports from China.[26]

   While a 5% allocation of the USOF was presented under the Union Budget 2022-23, perhaps a greater amount can be allocated in order to manufacture digital components locally and cater to our terrain. The usage of the 5% allocation from USOF in the status quo is being directed toward building ICT infrastructure, especially for the rollout of 5G services in the country.[27]

2. ***Light touch regulation and reduction of USL:*** The DoT can perhaps reconsider the USL and cease its 5% levy on telcos either permanently or for a set duration of time till the

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[21] Tejpal, R. (2020 August 13) *Why the government must suspend the USO levy, leave e7pansion of rural telephony to private telcos*, Economic Times. Retrieved on August 30, 2022, from https://m.economictimes.com/prime/media-and-communications/why-the-government-must-suspend-the-uso-levy-leave-expansion-of-rural-telephony-to-private-telcos/primearticleshow/77514006.cms

[22] Phadnis, A. (2021 August 10) *Vodafone Idea files review petition in apex court on AGR dues*, Business Standard. Retrieved on August 30, 2022, from https://www.business-standard.com/article/companies/vodafone-idea-files-review-petition-in-apex-court-on-agr-dues-121081001965_1.html

[23] ET Bureau (2022 July 30) 'Govt wants to promote local cos in 5G rollout', Economic Times. Retrieved on August 30, 2022, from https://economictimes.indiatimes.com//news/india/govt-wants-to-promote-local-cos-in-5g-rollout/articleshow/93241269.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

[24] Abbas, M. (2022 August 25) *BSNL draws flak from domestic vendors, extends 4G upgrade tender deadline for extremism hit areas*, Economic Times telecom. Retrieved on August 30, 2022, from https://telecom.economictimes.indiatimes.com/news/bsnl-draws-flak-from-vendors-extends-tender-deadline-for-4g-upgrade-in-red-corridor-areas/93768076

[25] Minister of Communications (2022 July 1) *Department of Telecommunications signs agreement with ITI Limited and BSNL to fund pilot projects under Universal Service Obligation Fund (USOF)*, Ministry of Communications. Retrieved on August 30, 2022, from https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1838558

[26] *Supra Note 12*

[27] Abbas, M. (2022 February 3) *USO fund support will drive design-led manufacturing in 5G, 6G: DoT Secretary*, Economic Times. Retrieved on August 30, 2022, from https://m.economictimes.com/industry/telecom/telecom-news/uso-fund-support-will-drive-design-led-manufacturing-in-5g-6g-dot-secretary/amp_articleshow/89307878.cms

collected funds are exhausted. Such a step would allow breathing room for telcos and also enable them to be better able to repay AGR dues.

3. ***Decentralising the building and maintenance of ICT infrastructure:*** The USOF can utilise its funds and make significantly more impact in its coverage of regions where internet services are currently unavailable or extremely slow. Allowing private companies to seek funds for projects under conditions set by the DoT will allow for parallel coverage across the country instead of a project-wise rollout as seen in the Left Wing Extremism (LWE) regions etc.

   Currently, 25,067 inhabited villages still do not have mobile network coverage, and this presents a significant obstacle in India's push toward a digital future.[28] While BharatNet and other initiatives funded by USOF have shown great progress in increasing coverage, they are often providing unreliable and slow connections to these regions that do not benefit these regions in the long run as most sites are nonfunctional in 2G mobile network speeds. Allowing private companies to build and maintain infrastructure would significantly increase our network coverage timelines and help reduce costs.

   A *second prong* towards decentralisation under this suggestion would be to enable infrastructure sharing of ICT infrastructure between companies to provide better network coverage to remote areas. Such a step reduces the turnaround times for providing stable mobile coverage to uncovered areas in the interim and formulates a foundational step in telecom policy that can benefit all stakeholders.[29]

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[28] Minister of State for Communications (2021 August, 4) Lok Sabha Unstarred Question No. 2672, Lok Sabha. Retrieved on August 30, 2022 from http://164.100.24.220/loksabhaquestions/annex/176/AU2672.pdf

[29] COAI (2017 May) *Responses to TRAI Consultation Paper on Definition of Revenue Base (AGR) for the Reckoning of Licence Fee and Spectrum Usage Charges*, Association of Unified Telecom Service Providers of India. Retrieved on August 30, 2022 from
https://cdn.coai.com/sites/default/files/2017-05/COAI%20Response%20-%20TRAI%20consultation%20Paper-%20AGR%20final.pdf

8. Standards, Public Safety, and National Security

We welcome the department of telecommunication's intention to come up with a new law which has appropriate provisions for addressing situations of public emergency and public safety and for taking measures in the interests of national security. Targeted surveillance in the form of interception has a long-standing history predating any of the recent technological developments. Under legal grounds of section 5(2) of the Indian Telegraph Act 1885, the government can intercept, monitor, and decrypt any information for protecting sovereignty, national security, friendly relations with international governments, integrating public order etc.

We like to take this opportunity to suggest an overhaul of the legal framework of surveillance to keep up with the pace of technological developments. The Indian surveillance legal framework is archaic[30], since then the world has changed, technology has changed, and so have the techniques used for surveillance in India and the legal fabric (Puttaswamy judgement I[31]).

The Indian surveillance legal framework came into existence when bulk surveillance barely existed, and discourse around privacy and surveillance was not well developed. Over time, surveillance technologies, data processing, and analytics tools have evolved massively, which has paved the way for extensive interceptions (intentionally and unintentionally).[32] This development calls for revamping our existing legal framework for surveillance which would consider the evolving technological developments.

The current legal framework of surveillance poses caveats that cause implications to the citizens.. The caveats also cause fall-through the crack, where it provides room for state actors to perform surveillance at their discretion without appropriate checks and balances.

This is problematic because the data collected through disruptive surveillance technology are not safeguarded against misuse; who can access data and whether it is only used for the stipulated purpose is unknown, and measures to prevent and tackle breach and abuse are not specified. Also, in many cases, citizens never know about the data collected through these digital surveillance tools (in case of no conviction as well), which hampers their fundamental right to privacy.

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[30] Historically, in India, surveillance has been a right of the state to deploy intrusive measures against citizens with minimal checks and balances. A slew of colonial laws that were passed in the 19th century by the British allowed the Raj to monitor communications, be it postal or telegraph. These laws continued to exist with impunity until the Supreme Court intervened in December 1996 (PUCL case), passing specific guidelines as safeguards against illegal or excessive surveillance by the State

[31] Puttaswamy Judgement I, (2017) 10 SCC 1

[32] Bhandari, V., Parsheera, S., Rahman, F., & Felman, J. (2018, May 18). *India's communication surveillance through the Puttaswamy lens*. The Leap Blog. Retrieved March 12, 2022, from https://blog.theleapjournal.org/2018/05/indias-communication-surveillance.html

Besides, the current legal framework doesn't have guidelines for the State to determine safe tools for surveillance purposes. For instance, when the state uses technologies for which the domain name used by a Command and Control (C&C) server resolves to cloud-based virtual private servers rented by a foreign company, it increases national security concerns as they are a registered private company in another country. Therefore, to set India's trajectory towards empowering citizens, we suggest having more precise, purposive, proportionate, and comprehensive surveillance legislation for the country.[33]

Recommendation:

Many jurisdictions have revamped/enacted surveillance legislation[34] to cater to recent technological developments. Therefore, India must pick inferences from various jurisdictions and enact more comprehensive surveillance legislation or reform the existing surveillance regime. On that note, we believe the below-discussed levers and pointers may form a sturdy new law, or amend existing laws, to achieve an empowered citizenry for the country.

- **Clear definitions:** Through the new law, we suggest moving from the broad language used in the status-quo to defining various critical terminologies such as national security, public order etc. and principles like proportionality, necessity, suitability, and legality etc., in a tight fashion. The defined terminologies must find the right balance, where we strive to minimise falling through the cracks due to narrowness.[35]

- **Robust accountability & oversight:** The new law must provide for setting up a Multi-Party Parliamentary Standing Committee to oversee the operations of law enforcement agencies and intelligence agencies. A mechanism followed by the UK should advise the model because India inherited and emulated the Westminster model of parliamentary government. The UK has the Intelligence and Security Committee of Parliament[36], formed under the Intelligence Services Act 1994 (reinforced by the Justice and Security Act, 2013[37]) to oversee the policies, expenditure, administration and operations of various intelligence agencies subjected to secrecy.[38] In advanced

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[33] Shekar, K. (2021, November 8). *Why Do We Need Surveillance Reform in India? – Recent Developments | SCC Blog*. SCC Online. Retrieved August 31, 2022, from https://www.scconline.com/blog/post/2021/11/08/why-do-we-need-surveillance-reform-in-india-recent-developments/

[34] For instance, in the UK, the government enacted the Investigatory Powers Acts, 2016, which applies to intelligence agencies to ensure powers and principles fit the digital age.

[35] Shekar, K., & Mehta, S. (2022, February 17). The state of surveillance in India: National security at the cost of privacy? ORF. Retrieved August 31, 2022, from https://www.orfonline.org/expert-speak/the-state-of-surveillance-in-india/

[36] *Intelligence and Security Committee of Parliament (ISC)*. (n.d.). Retrieved March 12, 2022, from https://isc.independent.gov.uk/

[37] Sections 2, 3, and Schedule I of the Justice and Security Act, 2013

[38] Section 1(1)(b) of the Official Secrets Act 1989

democracies such as the UK, the Prime Minister retains control over who will be part of the Committee, provided they are drawn from other parties besides his/her own. In addition to this, the parliamentarians must be granted access to information held by intelligence and law enforcement agencies without restricting any information under the ambit of preserving national security. A similar mechanism is followed by the United States, where the US Congress monitors law enforcement agencies and intelligence agencies, and there are no statutory restrictions on information access.[39]

Moreover, the new law should have provisions for judicial authorisation for two reasons (a) prevention and investigation of criminal offences (warrant of interception from the concerned court, with expiry time duration and archiving of intercepted contents and submission to the court). The court warrant must assess the constitutional validity of the request for surveillance through four prerequisites, i.e., legality, legitimate goal, proportionality, procedural guarantees, and (b) a special authority (to be created) for intelligence purposes that can be on the lines of the UK Investigative Powers Commissioner.[40] This authorisation mechanism would bring about a separation of powers to check and oversee. The new legislation should ensure that State agencies (both intelligence and law enforcement agencies) must take a prior warrant from the court to intrude into the private communications between individuals. Various jurisdictions follow this mechanism[41], and India must pick inferences from those to devise a more nuanced judicial authorisation system. The court warrant must access the constitutional validity of the request for surveillance through four prerequisites (as follows) for infringing upon an individual's privacy and personal liberty discussed in Puttaswamy Judgement I.[42]

In addition to the external oversight proposed above, the existing review committee model formed under Rule 419A of the Indian Telegraph Act must be revamped in the new legislation. The constituted authority should be answerable to the Parliamentary Committee and the Parliament in general. Also, it should be empowered to take complaints about unauthorised disclosure of classified or sensitive national security information, illegal surveillance activity, administrative misconduct etc.

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[39] F Smist, Congress oversees the intelligence community, 2nd edition, University of Tennessee Press, Knoxville, 1994.

[40] Please see the UK's Office of the Investigatory Powers Commissioner https://www.ipco.org.uk/

[41] Under the Canadian Security Intelligence Service Act, 1985, specially designated judges of the Federal Court provide the approval to the warrant of the intelligence agencies. In the United States, intelligence and law enforcement agencies must take warrants, court orders etc., for domestic surveillance activities under the Electronic Communication Privacy Act of 1986. In addition, in Riley v. California, the United States Supreme Court marked that search and seizure of digital data are considered to be unconstitutional.

[42] Puttaswamy Jusgement I, (2017) 10 SCC 1 [S.K. Kaul, J part]

These oversight mechanisms would therefore create a separation of powers to check and oversee executive actions, which could sometimes hamper democratic safeguards due to malicious motives.[43]

- **Technical Safeguards:** Various technical safeguards must be established to protect the privacy of individuals following some of the below universal principles:
    - **Data minimisation:** The data collected through means of surveillance should not exceed the purpose for which it was collected and should not be held/stored post the completion of the purpose.
    - **Proportionality:** The data required through surveillance must have a rationale connection with the object of the investigation, such that the data demanded is absolutely necessary. The UK also propagates this principle through its Investigatory Power Act, 2016 (previously Regulation of Investigatory Powers Act, 2000), which mandates that data demanded by intelligence agencies must be necessary and proportionate.
    - **Purpose limitation:** The information received through surveillance must be processed only for the case/investigation it was accrued. The investigating agency must initiate a new request to use the same evidence in other cases/investigations. Besides, the usage of evidence for anything other than law enforcement must be prohibited.
    - **Privacy by design**[44]: The processing of evidence by law enforcement agencies and intelligence agencies should be privacy-friendly and doesn't trade off privacy at the cost of other State interests such as national security, public order etc. It should use Privacy Enhancing Technologies to ensure that unnecessary personal details are not exposed. The access control must be designed to be adequately granular, with audit trails, to enforce privacy and accountability.
    - **Data provenance:** Law enforcement agencies and intelligence agencies must have legal and technical measures to differentiate citizens from foreign nationals within the bulk of data gathered through surveillance. By identifying the provenance of the data, it should be treated differently as Indian citizens have constitutional rights and protections that must be factored in while using their data
    - **Data security:** The data collected through surveillance should be encrypted at rest to ensure the safety of the information stored.
    - **Data deletion:** The data collected through surveillance must not be retained longer than necessary, which is followed by intelligence agencies in the UK under

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[43] Ryan, J. (2009, April 14). *Torture Memo Gave White House Broad Powers*. ABC News. Retrieved March 12, 2022, from https://abcnews.go.com/TheLaw/DOJ/story?id=4569746&page=1

[44] Privacy by design has seven foundational principles - https://iab.org/wp-content/IAB-uploads/2011/03/fred_carter.pdf

Investigatory Powers Act, 2016.[45] At the laps of data retention mandate by regulations, the information gathered through surveillance by law enforcement and intelligence agencies must be destroyed.

- **Data disclosure:** When a crime or security threat is not established from the data collection and processing exercise, the agencies must inform the individuals about the surveillance and reveal the data collected (after a period of time) to them.
- **Fair and lawful processing:** The data acquired through surveillance must be processed fairly and lawfully such that unintended consequences like discrimination, historic disposition, and oppression do not translate into the action.
- **Training:** The personnel engaged in surveillance, including supervisory officials, must attend training on privacy and ethics annually to ensure that the right culture is built and nurtured.

- **Administrative safeguard:** The new law must ensure that every law enforcement agency and intelligence agency must have privacy/ethics officers within their agencies to ensure day-to-day operations are not violating ethicality and privacy. The officer should also advise and guide the officials on privacy and ethical issues. Many countries, including the US, UK and Germany, follow this system; for instance, in the US, the Office of Privacy and Civil Liberties is formed within the CIA[46], NSA[47] etc.

- **Redressal mechanism:** The new law must have a robust grievance redressal mechanism. When the individual is established not guilty through the data collected and processed through legal means, the individual (or a group) must have a redressal option through the legislation if they consider it unnecessary surveillance. If the individual manages to prove that their data is (a) misused, (b) compromised, (c) infringed privacy (of themselves and others), etc., they must be appropriately compensated, and involved officials must be subjected to punishment.

  To perform the above redressal function, the new law must provide an independent surveillance tribunal in India to take grievances from individuals (or groups of individuals). The tribunal must adopt a system that assures efficiency, quick turnaround, and cost-effectiveness. A tribunal system is followed in the UK, where the Investigatory Powers Tribunal[48] is established under the Regulation of Investigatory Powers Act, 2000.

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[45] Sections 87 and 150 of the Investigatory Powers Act, 2016.

[46] *Office of Privacy and Civil Liberties*. (n.d.). CIA. Retrieved March 12, 2022, from https://www.cia.gov/about/organization/privacy-and-civil-liberties/

[47] *Civil Liberties & Privacy Overview*. (n.d.). National Security Agency. Retrieved March 12, 2022, from https://www.nsa.gov/Culture/Civil-Liberties-and-Privacy/Overview/

[48] *The Investigatory Powers Tribunal*. (n.d.). Retrieved March 12, 2022, from https://www.ipt-uk.com/

Individuals can approach the tribunal in the UK if they believe their right to privacy, property and communication is infringed upon.

The new law must also have provisions to approach the courts, where citizens and service (communication and internet) providers file petitions if they believe the interception order is excessive. They shall also challenge the order and seek a modification to the order. This approach was implemented in the US under Foreign Intelligence Surveillance Act (FISA).[49]

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[49] Section 702 of the Foreign Intelligence Surveillance Act

9. About The Dialogue

The Dialogue™ is a public-policy think-tank with a vision to drive a progressive narrative in India's policy discourse. Founded in 2017, we believe in facilitating well-researched policy debates at various levels to help develop a more informed citizenry on issues concerning technology policy. The Dialogue™ has been ranked as one the world's Top 10 think- tanks to watch out for, by the Think-Tank and Civil Societies Programme (TTCSP), University of Pennsylvania, in their 2020 and 2021 rankings.

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KOAN

1 September, 2022

To,

Anand Singh,
Joint Secretary - Telecom,
Department of Telecommunications

Naveen Kumar,
Director (Restg.),
Department of Telecommunications

Subject: Response to request for comments on the 'Need for a new legal framework governing Telecommunication in India'

Dear Sir,

Koan Advisory Group is a New Delhi-based policy advisory firm. Our team combines thorough domain knowledge across multiple technology-oriented sectors with continuous engagement of decision-makers in industry and government. We work with several digital application service providers to identify optimal frameworks that maximise societal welfare.

We are delighted to be afforded the opportunity to respond to the Department of Telecommunications (DoT) Consultation Paper on the 'Need for a new legal framework governing telecommunications in India'. We do so in the context of overarching policy targets of a USD 1 trillion digital economy, which can sustain 60 to 65 million jobs by 2025 as articulated by the Ministry of Electronics and Information Technology (MeitY), and also noted in the National Digital Communications Policy, 2018 (NDCP, 2018)[1]. Specifically, MeitY underlines that the "potential benefits of digitisation are contingent on India's ability to generate efficiencies in production and distribution on a mass scale, which will require regulatory and policy changes coupled with a significant increase in digital investment by government, private enterprise, and individual stakeholders".

We focus our submission on an enabling policy and regulatory environment for India's growing digital applications ecosystem. To this end, we suggest that a 21st-century regulatory regime for telecommunications should be underpinned by the following principles:

Differentiation between application and infrastructure layer: Application layer aid in the creation and packaging of innovative services across sectors like entertainment, education, and e-commerce. Infrastructure layer, on the other hand, are services that enable the transmission of services from digital applications to end-users by providing access to the underlying technical infrastructure - a role performed by access service providers such as TSPs and ISPs. A policy framework aimed at spurring growth in the telecommunications sector must ensure that the structural segregation between application and infrastructure layer reflected in the laws that regulate the different aspects. This distinction is also implicitly recognised by the NDCP, 2018. The Policy calls for enabling 'infrastructure convergence of IT, telecom and broadcasting' and envisions fulfilling the information and communication needs of citizens and enterprises through the establishment of a ubiquitous, resilient, secure, accessible, and affordable Digital Communications Infrastructure.

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[1] National Digital Communications Policy, 2018; available at https://dot.gov.in/sites/default/files/EnglishPolicy-NDCP.pdf

It is worth noting that both the application and infrastructure layers operate in different market structures. TSPs/ISPs offer a general-purpose technology, built on a public good (i.e., 5G) which represents a competitive market. Digital applications, on the other hand, operate in a monopolistically competitive setting (as evident through differential tariff settings, based on consumer tastes and preferences). With these market structures, TSPs/ISPs will pass through all the costs to consumers (competitive market entails 'normal' profit appropriation, i.e., total revenue minus the total cost). The same may not be true for digital applications. Additional cost/price regulatory or otherwise is likely to have a distortionary effect, as it will favour those with deeper pockets over the others with shallow pockets. This is because those with deeper pockets will find it strategically advantageous to engage in aggressive pricing, and thus crowd out the other application service providers with shallow pockets (in a similar service delivery line). Moreover, digital applications are already subject to multiple regulatory obligations related to tax, competition, privacy, and consumer protection.

Therefore, given the inherent functionality of application and infrastructure layer, we recommend that the Indian government continue the practice of distinct regulatory framework for different players in the internet value chain.

Reaffirming the Principle of Network Neutrality: Digital applications are an essential—and increasingly important—element of the broadband value chain. TSPs/ISPs and the applications ecosystem share a symbiotic relationship. While the former makes investments in network infrastructure, on which application service providers generate business, penetration of internet content creates an increasing demand for faster broadband speed and thus efficient usage of the network spectrum. Their market operations are accordingly attuned - TSPs realise revenues from the increased data usage of internet-connected customers for various applications. Application providers generate revenue through their products/services offering. Any change in this current operation architecture – through imposing additional costs on digital applications for network infrastructure or any differential/discriminatory treatment of applications – will have a bearing on TSP revenue as well (as well as consumer welfare), given consumers are cost sensitive.

We recommend that any new regulatory regime for telecommunications should reaffirm the network neutrality principle to ensure fair and equitable access to digital services.

Removing or reducing existing regulations; do not add new ones: Regulation is not without cost. Rather than impose outdated and unnecessary regulatory obligations on any market participants, policymakers should instead consider eliminating or streamlining such obligations on legacy players in order to promote investment, growth, and access to broadband. The Indian government should be cautious when introducing any new economic or compliance obligations on the application layer. In September 2020 the Telecom Regulatory Authority of India (TRAI) in its Recommendations on Regulatory Framework for Over-The-Top (OTT) Communication services called for maintaining a regulatory forbearance. The TRAI also noted that it is not an opportune moment to recommend a comprehensive regulatory framework for various aspects of services referred to as OTT services, beyond the extant laws and regulations prescribed presently.

Furthermore, any assertion that digital applications do not contribute to network infrastructure is inaccurate. Between 2011 -2013, OTT players invested approximately $33 billion annually in network infrastructure worldwide, including data centers, submarine cables, and servers for data transport, delivery, and hosting, according to a report by Analysys Mason[2]. Between 2014-2017, that number went up to $ 75 billion per year[3].

In light of the above, we recommend that efforts should be made to rationalise regulatory obligations and costs that are imposed on legacy participants such as TSP and ISPs instead of introducing new regulations for the application layer.

We hope to contribute to such consultations in the future, and remain at your disposal for any clarification.

Warm Regards,

Mohit

Mohit Kalawatia
Senior Associate
Koan Advisory Group

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[2] Analysys Mason, Investment in networks, facilities and equipment by content and application providers, September 2014; available at https://www.analysysmason.com/consulting-redirect/reports/content-application-provider-investment/

[3] Analysys Mason, Infrastructure Investment by Online Service Providers, December 2018; available at https://www.analysysmason.com/consulting-redirect/reports/online-service-providers-internet-infrastructure-dec2018/

CUTS International

CUTS Submission to the Department of Telecommunication on the Need for a New Legal Framework Governing Telecommunication in India

1. Background

Consumer Unity & Trust Society (CUTS) expresses its gratitude to the Department of Telecommunications (DoT), for releasing a Consultation Paper on the 'Need for a New Legal Framework Governing Telecommunication in India'[1].[2]

2. About CUTS

In its 39 years of existence, CUTS has come a long way from being a grassroots consumer centric organisation based in Jaipur,[3] to opening overseas Resource Centres in Vietnam,[4] Africa,[5] Switzerland,[6] and most recently in the United States of America.[7] It continues to remain an independent, nonpartisan, and non-profit economic policy think tank, while opening various programme centres, namely: Centre for International Trade, Economics & Environment (CITEE);[8] Centre for Consumer Action, Research & Training (CART);[9] Centre for Human Development (CHD);[10] and Centre for Competition, Investment & Economic Regulation (CCIER).[11]

CUTS has been working towards enhancing the regulatory environment through evidence-backed policy and governance-related interventions across various sectors and national boundaries. It has conducted various studies and events, pertaining to the telecom sector, such as Demystifying Reality from Myth for 5G in India,[12] Coding and Enforcing Mobile Internet Quality of Standards in India,[13] Consumer Broadband Labels for Greater Transparency & Informed Consumers,[14] Towards Effective Choice: A Nation-Wide Survey of Indian TV Consumers,[15] among many others. Based on such evidence-based studies, CUTS is pleased to

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[1] Consultation Paper available at: https://dot.gov.in/sites/default/files/Consultation%20Paper%20final%2023072022-1.pdf?download=1

[2] Press Release inviting comments, available at: https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1845920

[3] CUTS International website: https://cuts-international.org/

[4] CUTS Hanoi Research Centre website: https://cuts-hrc.org/

[5] CUTS Africa Resource Centres – Nairobi website: https://cuts-nairobi.org/; Accra website: https://cuts-accra.org/; and Lusaka website: https://cuts-lusaka.org/

[6] CUTS Geneva Resource Centre website: https://www.cuts-geneva.org/

[7] CUTS Washington Resource Centre website: https://cuts-wdc.org/

[8] CUTS CITEE website: https://cuts-citee.org/

[9] CUTS CART website: https://cuts-cart.org/

[10] CUTS CHD website: https://cuts-chd.org/

[11] CUTS CCIER website: https://cuts-ccier.org/

[12] Report: https://cuts-ccier.org/pdf/research-report-5g-in-india-demystifying-reality-from-myth.pdf

[13] Details: https://cuts-ccier.org/coding-and-enforcing-mobile-internet-quality-of-standards-in-india/

[14] Details: https://cuts-ccier.org/project-launch-meeting-consumer-broadband-labels-for-greater-transparency-informed-consumers/

[15] Available at: http://cuts-ccier.org/pdf/research-report-towards-effective-choice-a-nation-wide-survey-of-indian-tv-consumers.pdf

submit its comments on the Consultation Paper, which have been discussed in subsequent sections.

3. CUTS Submission

The submission has been split into two parts. The first highlights broader issues/ recommendations, while the second provides specific comments on issues which have been covered in the paper.

3.1 Broad issues

The Consultation Paper is brought out at an opportune time, as India looks to become a global leader in the telecommunications space. Telecommunications form the basis of digital services. The Consultation Paper rightly highlights that a *universal, resilient, secure, accessible, and affordable telecommunication* network is necessary for making India inclusive. While the paper lays down specific issues, CUTS has observed key broad issues which are laid out below along with recommendations.

- *Conduct Cost-Benefit Analysis (CBA)*

The new law is rightly expected to be attuned to the realities of the telecom sector, which helps in realising the full potential of telecom in India.[16] In order to realise this goal, it becomes necessary to conduct a Regulatory Impact Assessment (RIA) through mechanisms like Cost-Benefit Analysis (CBA) before enacting the new law.[17] To this end, it would be essential identify the problem statement or objective which the intended legislation intends to address/ achieve.

Regulatory instruments have widespread impacts, and affect multiple stakeholder groups in different ways. Sub-optimal regulations have the potential to impose unintended cost of administration and compliance, leading to adverse outcomes, thereby reducing the likelihood of achievement of its objectives. It is therefore important to understand the impacts of any proposed regulation, to achieve favourable outcomes.

RIA is a process of systematically identifying and assessing direct and indirect impacts of regulatory proposals using consistent analytical methods. It involves a participatory approach via public consultation to assess such impact, determination of costs and benefits, and selecting the most appropriate regulatory proposal. It also helps in putting checks and balances on the government, while exercising its exclusive privilege to do things necessary in the context of telecommunication.

It is therefore recommended that the government engages with organisations experienced in conducting RIA, before finalising provisions of the new law. Conducting adequate stakeholder consultations would also be useful, in this regard.

- *Focus on follow-up action*

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[16] Paragraph 6 of the Consultation Paper.

[17] Details of RIA are available at: https://cuts-ccier.org/regulatory-impact-assessment/

Efforts have been made previously as well, for having a consolidated telecom law. In 2001, based on the recommendations of an expert committee, the government had introduced the Communications Convergence Bill, 2001, with a similar objective of consolidating prevailing telecom laws.[18] However, the bill did not see the light of day, and lapsed.[19] Again in 2014, the government was believed to be working on the Communications Convergence Bill, 2014, with the same objective.[20] However, there was no forward movement on it.[21] Accordingly, it is recommended that the government focuses on putting its plan into action this time.

- *Ensure Coherence with NDCP'18*

A lot has changed in India, in the sphere of telecom and digital technology, since the last time deliberations were held on consolidating laws pertaining to the sector. Accordingly, a good starting point of reference for revamping laws would be the National Digital Communication Policy 2018 (NDCP'18).[22] Though it comes with its own shortcomings,[23] there is a need to frame laws which enable achieving the vision of NDCP'18, with respect to the following, among others: Explore setting up a national fibre authority, and accord optic fibre cables the status of public utility; Accord telecom infrastructure the status of critical and essential infrastructure; Channelise the Universal Service Obligation Fund (USOF) for ensuring inclusion of uncovered areas and digitally deprived segments of society; and Incentivise manufacturing in India, and contribution to GVCs.

3.2 Issues Covered

With respect to specific issues highlighted in the Consultation Paper, CUTS makes the following specific recommendations.

- *Consolidate Existing Laws (Para 7)*

Multiple laws including Indian Telegraph Act, 1885, Wireless Telegraphy Act, 1933 and Telegraph Wires (Unlawful Possession) Act, 1950 constitute the legal framework for governing the telecommunication sector. Adding to these, a number of other laws like the

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[18] The Communications Convergence Bill: India's Tryst with Destiny, Mondaq, available at: https://www.mondaq.com/india/broadcasting-film-tv-radio/16955/the-communications-convergence-bill-indias-tryst-with-destiny

[19] Monitoring the New Communication Space, The Hindu Business Line, available at: https://www.thehindubusinessline.com/opinion/monitoring-the-new-communication-space/article31916690.ece

[20] Communications Convergence Bill, 2014, available at: https://www.psalegal.com/wp-content/uploads/2021/12/Communications-Convergence-Bill-2014-Bill.pdf

[21] Convergence: An idea whose time has come? Factor Daily, available at: https://archive.factordaily.com/is-convergence-an-idea-whose-time-has-come-in-india/

[22] National Digital Communications Policy 2018, available at: https://dot.gov.in/sites/default/files/Final%20NDCP-2018.pdf?download=1

[23] CUTS' Comments on the draft National Digital Communications Policy 2018, available at: https://cuts-ccier.org/pdf/CUTS_Comments_on_Draft_National_Digital_Communication_Policy2018.pdf

Telecom Regulatory Authority of India Act, 1997, rules and regulations over the past many decades have led to a complex regulatory structure.[24]

While assessing whether provisions in the telecom related laws should be retained or not, a three-step test of legitimacy, necessity, and proportionality may be adopted.[25] Herein, any regulation must pass the following three tests to be retained.

- *Test of Legitimacy*: If any provision is not legitimate, it should be scrapped. If yes, the next test of necessity should be applied.
- *Test of Necessity:* If the provision passes the test of legitimacy, the test of necessity should be applied to check if the provision is necessary. If not, the provision should be scrapped. If yes, the next test of proportionality should be applied.
- *Test of Proportionality:* If the provision passes both the tests of legitimacy and necessity, it should be checked if the provision is proportional to the objective sought to be achieved. If not, the provision should be amended. If yes, the provision should be retained.

Further, while consolidation of existing laws is necessary and may lead to simplification, there is also a need to identify specific objectives that the law will seek to achieve.

One of the reasons for the survival of the Indian Telegraph Act for more than 135 years is that it was confined to mandated and disallowed actions and outcomes.[26] While many new technologies such as 5G and 6G, Internet of Things etc. are coming up, technology evolution is a continuous process. In this context, the new legal framework should be designed in such a manner that it can foster innovations, manage risks, empower consumers, ensure transparency, accountability, access, inclusion and good quality of services, among other things. Accordingly, for making a future ready and enabling legal framework, there is merit in making the law technology neutral by adopting a principles-based approach.

Further, today, the telecom sector has become integrated with the digital sector. Newer technology use cases like tele-healthcare, among others will be impacted by telecom as well as other sectors.[27] There are talks of a revised data protection and privacy law,[28] as well as a law for replacing the Information Technology Act, 2000.[29] Therefore, scope of consolidation of telecom laws, and harmonisation with other laws would need to be thought through clearly. Thus, the DoT should engage with other relevant government ministries and departments such as the Ministry of Electronics and Information Technology (MeitY).

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[24] Less litigation, easy norms in next phase of telecom reform, Livemint, available at: https://www.livemint.com/industry/telecom/less-litigation-easy-norms-in-next-phase-of-telecom-reform-11640284113825.html

[25] Policy Sudy on Doing Business in Rajasthan, CUTS International, available at: https://cuts-ccier.org/pdf/cuts-project-on-codb-final-report.pdf

[26] Digital regulation: Main challenges and how India can deal with them, The Economic Times, available at: https://economictimes.indiatimes.com/opinion/et-commentary/digital-regulation-main-challenges-and-how-india-can-deal-with-them/articleshow/93508018.cms

[27] Cross-sectoral regulatory cooperation emerges as a requirement in New Telecom, The Economic Times, available at: https://economictimes.indiatimes.com/opinion/et-commentary/cross-sectoral-regulatory-cooperation-emerges-as-a-requirement-in-new-telecom/articleshow/93306529.cms

[28] Govt withdraws Data Protection Bill, 2021, will present new legislation, Business Standard, available at: https://www.business-standard.com/article/economy-policy/centre-withdraws-personal-data-protection-bill-2019-to-present-new-bill-122080301226_1.html

[29] New IT Act may bring in deliberate misinformation, doxxing as offences, Business Standard, available at: https://www.business-standard.com/article/economy-policy/new-it-act-may-bring-in-deliberate-misinformation-doxxing-as-offences-122071400356_1.html

Moreover, consolidation of existing laws should also help in harmonisation between the market regulator, the Competition Commission of India (CCI) and sector regulator, the Telecom Regulatory Authority of India (TRAI), as well as other upcoming cross-sectoral regulators like the regulator for data protection such as the erstwhile proposed Data Protection Authority (DPA) in the now withdrawn Data Protection Bill, 2021. The law should also have provision of mandatory consultation with sector neutral regulator including the competition regulator, CCI. This will promote coordination and cooperation between these regulators and thus, help the industry grow.

- *Putting Consumers First (Para 8)*

The paper has rightly recognised the need for improving the comprehensibility of laws for citizens, by simplifying laws. Steps to be taken in this regard not only include drafting simple and easy to understand laws (through summaries, multilingual translations, examples etc.), but raising awareness about the laws as well. This can be done by undertaking different state level initiatives, in partnership with credible consumer organisations.

The role of consumer organisations is also important for providing effective and timely grievance redress to consumers. A good practice worth adopting in this regard pertains to supporting Consumer Support Centres, commonly known as *Grahak Sewa/ Suvidha/ Sahayata Kendras* (GSK). A quick overview of the quarterly analysis of consumer grievances received by CUTS GSK in Rajasthan reveals that a substantial number of grievances pertain to the telecom sector.[30]

Accordingly, the consolidated framework may incorporate appropriate provisions in this regard. Furthermore, it would be useful to appoint credible consumer organisations as advisory bodies to government departments and regulators. Providing consumers with Alternate Dispute Resolution (ADR) mechanisms on lines of Reserve Bank of India's (RBI) Ombudsman for Digital Transactions (ODT),[31] would also help in enabling greater transparency and increased accountability, both from the government and the industry.

There is also a need for focussing on enabling effective consumer choice, while choosing different telecom and internet services. It has often been the case that consumers are not fully aware about, or capacitated to understand the details/ specifications of their subscriptions. Mandating service providers to provide consumer broadband labels, which can provide key details of the service offering in an easy infographic format, becomes useful in this regard.[32] This becomes more important in light of upcoming next generation mobile communication technologies – 5G and 6G, which are set to unlock novel use cases of telecom services.

Similar issues can also be seen in the TV market, wherein studies have shown that consumers are unable to exercise choice in subscribing to channels they want to watch, and instead end up subscribing to channels which they do not want to watch, due to lack of awareness and capacity constraints. Consumers have also claimed to be dissatisfied with the quality of TV service, and being excessively reliant on last mile service providers. With the TRAI expected to revisit regulations in this regard, it becomes important for the regulator to consider a consumer perspective, and engage with credible consumer organisations while framing regulations.[33]

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[30] Consumer Support Centre (Grahak Sahayta Kendra), available at: https://cuts-cart.org/consumer-support-centre-grahak-sahayta-kendra/

[31] RBI launches Ombudsman Scheme for digital payments, available at: https://www.thehindubusinessline.com/money-and-banking/rbi-launches-ombudsman-scheme-for-digital-payments/article26140915.ece

[32] Consumer Broadband Labels for Greater Transparency & Informed Consumers, CUTS International, available at: https://cuts-ccier.org/project-launch-meeting-consumer-broadband-labels-for-greater-transparency-informed-consumers/

- *Simplifying Regulatory Framework, Ensure Regulatory Certainty and Promoting Investments (Para 9 - 13)*

India seeks to become a global leader in research, development and manufacturing of telecom technology. For this purpose, the regulatory framework needs to ensure regulatory certainty, transparency and accountability. As mentioned previously, establishing a principles based legal framework is necessary. This will allow the market and telcos to be broadly aware about the principles with which the government will regulate the telecom sector, thus providing regulatory certainty. This can promote private sector investments.

Currently, Indian network equipment manufacturers are unable to penetrate the market. There needs to be an active engagement between different stakeholders in the private sector such as telcos and network equipment manufacturers, among others. This may be promoted by the government as it will help the different stakeholders understand each other's requirements.

Further, in case of regulatory uncertainty regarding new innovations, provisions for experimenting with regulatory sandbox, regtech, suptech,[34] and co-regulatory approach involving not only industry but experts, and consumer organisations may be adopted. Furthermore, the new legal framework should ensure not to place any regulatory entry barriers, for newer telcos and other relevant industry players.

- *Legal Framework for Spectrum Management (Paras 14-17)*

Procurement of license for spectrum is governed by Section 4 of the Indian Telegraph Act. The allocation process has been marred by controversies in the past, with allegations of corruption and unjust enrichment. These led Supreme Court to cancel all allocations, resulting in severe adverse economic impact on the economy.

Previously, the Comptroller and Auditor General of India (CAG) had also raised concerns about spectrum management, highlighting that uncertainty in availability of spectrum has caused delay in spectrum allocations.[35] Telcos had also raised concerns about rules creating pricing uncertainty for 5G auctions.[36]

There is a need to practice an efficient, transparent and consistent method of spectrum allocation, design of which could be informed by findings and recommendations of the Ashok Chawla Committee on Allocation of Natural Resources.[37]

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[33] Effective Consumer Choice key for Indian TV Viewers: BIF-CUTS Survey, available at: https://cuts-ccier.org/effective-consumer-choice-key-for-indian-tv-viewers-bif-cuts-survey/

[34] Details available at: https://r2accelerator.com/

[35] CAG report highlights gaps in spectrum allocations, Down to Earth, available at: https://www.downtoearth.org.in/news/science-technology/cag-report-highlights-gaps-in-spectrum-allocations-84009

[36] Rules for 5G spectrum allocation create pricing uncertainty, Tech cos tell DoT, The Economic Times, available at: https://economictimes.indiatimes.com/industry/telecom/telecom-news/rules-for-5g-spectrum-allocation-create-pricing-uncertainty-tech-cos-tell-dot/articleshow/92555852.cms

[37] See: http://www.cuts-ccier.org/pdf/Report_of_the_Committee_on_Allocation_of_Natural_Resources.pdf

The sector and economy have also suffered previously owing to ambiguous definition of Adjusted Gross Revenue in the contract between government and the telcos.[38] While the DoT has recently amended the definition, there is a need to ensure that such situations do not arise in the future, by use of mutually agreeable terms in the contract, designed through stakeholder consultation, and consistent communication between government and relevant stakeholders. Institutionalisation of a forum to facilitate such engagement would be important.

A level playing field for public and private sector telcos is also essential for sustainability of the sector. The government recently pushed its public sector undertaking, the Bharat Sanchar Nigam Ltd (BSNL), to improve performance.[39] Use of appropriate incentives and disincentives would be crucial in this regard.

Previous experience shows that fierce competition led to many telcos being driven out of the market. While consumer welfare enhanced in terms of low-priced services being offered, such consolidation has now led to lesser choices being available with the consumers and prices have recently been again risen by telcos.

With respect to upcoming telecom technologies such as 5G and 6G, telcos are likely to generate a large share of the revenue from the private captive networks.[40] If private captive networks are allowed for private use, it may significantly impact the revenue shares of telcos.[41] These factors need to be taken into account while spectrum auction and licensing, so that telcos don't suffer revenue losses which drives them out of the market. The government should assess the situation of the market, including the paying capacity of telcos.[42] Thus, there may be merit in mandating a market study before conducting auctions within the legal framework. Further, constant review of market developments and impact of regulations may be institutionalised through sunset provisions and periodic reports.

- *Right of Way (Paras 18-20)*

The consultation paper states that RoW should be obtained in a uniform and non-discriminatory manner for telecom infrastructure. Earlier, TRAI had stated that several state governments continue to operate with their own rules for granting RoW permissions and others, even when have made changes to their RoW policy have not implemented them. These challenges impact overall broadband penetration.[43] By bringing in the Indian Telegraph Right of Way

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[38] DoT amends AGR definition to remove non-core items, The Economic Times, available at: https://telecom.economictimes.indiatimes.com/news/dot-amends-agr-definition-to-remove-non-core-items/87263819

[39] Ashwini Vaishnaw to BSNL: Customer is God, solve problems immediately, The Economic Times, available at: https://telecom.economictimes.indiatimes.com/news/ashwini-vaishnaw-to-bsnl-staff-focus-on-your-customers/93519476

[40] 5G, competitiveness, and growth, Financial Express, available at: https://www.financialexpress.com/opinion/5g-competitiveness-and-growth/2608597/

[41] 5G rollout unviable if captive private networks allowed, telcos tell govt, Business Standard, available at: https://www.business-standard.com/article/economy-policy/5g-rollout-unviable-if-captive-private-networks-allowed-telcos-tell-govt-122060900252_1.html

[42] "With only a 35 percent reduction in pricing, TRAI fails in recognising the paying capacity of telecos", Pradeep S Mehta, CUTS International, available at: https://cuts-ccier.org/with-only-a-35-percent-reduction-in-pricing-trai-fails-in-recognising-the-paying-capacity-of-telecos-pradeep-s-mehta-cuts-international/

[43] Recommendations on Roadmap to Promote Broadband Connectivity and Enhanced Broadband Speed, TRAI, available at: https://www.trai.gov.in/sites/default/files/Recommendations_31082021.pdf

(Amendment) Rules, 2022[44], the government has allowed telcos to enter into agreement with private property owners to lay cables without taking permission from the authorities. [45] Further, the GatiShakti Sanchar Portal launched by the DoT streamline the RoW application process across the country.[46] These reforms will help in faster roll out of 5G services across the country. This should be carried forward in the new legal framework. However, it must be ensured that adequate compensation and restitution in terms of other comforts are provided to citizens giving up their property by telcos.

Earlier, TRAI had recommended waiving off RoW charges for five years, from 2022-23 to 2027-28 for speedy laying of common ducts and posts.[47] As per the recommendation, DoT will have to coordinate with state governments, for this purpose. Accordingly, there may be merit in exploring ways in which deliberations between the central and state governments can be done within the new legal framework.

- *Framework for Mergers, Acquisitions etc. (Para 21)*

The TRAI had given 'Recommendations on Reforming the Guidelines for Transfer/ Merger of Telecom Licenses' in 2020,[48] to the Department of Telecommunications (DoT), with respect to the Guidelines for Mergers & Acquisitions, 2014. However, experts opined that the recommendations were too little too late, given that the telecom sector is today left with just three major private players, leaving little scope for Mergers and acquisitions (M&A).[49] Accordingly, more clarity remains to be given on whether there is a need for revisiting the framework for M&A in the telecom sector at this stage.

Also, given that the recommendations aimed at curbing anti-competitive issues, which may arise out of M&A in the sector, it is imperative for any proposed law on the subject, to be harmonised with the Competition Act. This becomes especially important considering the introduction of the competition amendment bill in parliament,[50] and the Report of the Expert Committee on Company Law which also dealt with M&A issues.[51] Furthermore, as noted

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[44] Indian Telegraph Right of Way Amendment Rules, 2022, Department of Telecom, available at: https://dot.gov.in/actrules/indian-telegraph-right-way-amendment-rules-2022

[45] DoT amends Right of Way Rules; to aid faster 5G roll-out, The Hindu, available at: https://www.thehindu.com/business/Economy/dot-amends-right-of-way-rules-to-aid-faster-5g-roll-out/article65811181.ece; 5G service will be available in most part of the country in 2-3 years: Ashwini Vaishnaw, The Times of India, available at: https://timesofindia.indiatimes.com/business/india-business/5g-service-will-be-available-in-most-part-of-the-country-in-2-3-years-ashwini-vaishnaw/articleshow/93783342.cms

[46] Gati-Shakti Vision for Telecom Infrastructure – Right of Way Rules Amended for Faster 5G Roll-out, Press Information Bureau, available at: https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1854472

[47] Trai's suggestion to waive RoW charges to reduce network rollout cost: COAI, Business Standard, available at: https://www.business-standard.com/article/economy-policy/trai-s-suggestion-to-waive-row-charges-to-reduce-network-rollout-cost-coai-121090601117_1.html

[48] Recommendations on Reforming the Guidelines for Transfer/Merger of Telecom Licenses, TRAI, available at: https://www.trai.gov.in/sites/default/files/Recommendation_21022020.pdf

[49] Trai proposal puts liability burden on sellers in telecom M&A deals, Business Standard, available at: https://www.business-standard.com/article/economy-policy/trai-moots-market-share-math-for-mobile-and-internet-service-providers-120022200002_1.html

[50] Over Rs 2,000-cr M&As may come under Competition Commission's purview, Business Standard, available at: https://www.business-standard.com/article/companies/over-rs-2-000-cr-of-m-as-may-come-under-competition-commission-s-purview-122080401489_1.html

[51] Report Of the Expert Committee on Company Law, Ministry of Corporate Affairs, available at: http://reports.mca.gov.in/MinistryV2/mergers+and+acquisitions.html

above, the sector regulator - TRAI, as well as the DoT will need to work closely with the market regulator - CCI on competition issues in the sector, and consider its findings from its market study on the telecom sector in India, conducted in 2021.[52] Mandating consultation, and creating a forum for cooperation would be useful in this regard.

- *Provisions pertaining to Insolvency (Para 22)*

Similar to jurisdiction issues between the TRAI and the CCI on competition aspects, another issue requiring further study is whether Guideline 11 of 'Guidelines for Access Spectrum Trading for Access Service Providers',[53] can override provisions of the Insolvency and Bankruptcy Code, 2016 ('IBC'). Notably, the National Company Law Appellate Tribunal (NCLAT) feels so, and has stated that the DoT must be paid all its past license dues, if the licenses are to be transferred under the IBC.[54] The NCLAT, in its order in the case of Union of India v. Vijaykumar V Iyer,[55] ensured that such operational dues to the DoT are cleared in preference to all other financial and operational creditors, arguably creating a new class of 'preferred' operational creditors. Experts opine this to be contrary to the IBC, which treats the DoT, or any other government licensor of land, mineral rights, intellectual property etc. as any other operational creditor.[56]

Accordingly, there is a need for deep diving on the subject, and give due attention to answering the following questions – Are Spectrum Trading Guidelines overridden by Section 238 of the IBC;[57] and is there a need to treat DoT as a special class of 'operational creditors'? and does the same need to be put in law?

- *Penalties (Para 25)*

The TRAI had been requesting the DoT to grant it powers to levy penalties upto INR 10 crores on telcos, and impose jail term upto 2 years on telecom executives, via an amendment in

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[52] Market Study on the Telecom Sector in India, Competition Commission of India, available at: https://dipa.co.in/reports/CCI%20Report%20-%20Market-Study%20on%20the%20Telecom%20Sector-In-India.pdf

[53] The seller shall clear all its dues prior to concluding any agreement for spectrum trading. Thereafter, any dues recoverable up to the effective date of trade shall be the liability of the buyer. The government shall, at its discretion, be entitled to recover the amount, if any, found recoverable subsequent to the effective date the trade, which was not known to the parties at the time of the effective date of trade, from the buyer or seller, jointly or severally. The demands, if any, relating to licenses of seller, stayed by the Court of Law, shall be subject to outcome of decision of such litigation. Guidelines for Trading of Access Spectrum by Access Service, TRAI, available at: https://dot.gov.in/sites/default/files/2015_10_13%20Trading-WPC_0.pdf

[54] NCLAT disposes of DoT petition against Videocon resolution plan, The Economic Times, available at: https://telecom.economictimes.indiatimes.com/news/nclat-disposes-of-dot-petition-against-videocon-resolution-plan/88844711; and How will you recover AGR dues from telecom companies facing insolvency, SC asks DoT, The Print, available at: https://theprint.in/judiciary/how-will-you-recover-agr-dues-from-telecom-companies-facing-insolvency-sc-asks-dot/479012/

[55] Union of India v. Vijaykumar V Iyer, Judgment dated 13 April 2021 in CA (AT) (Ins.) No. 1410/2019

[56] License dues trump the Insolvency and Bankruptcy Code? Lakshmi Sri, available at: https://www.lakshmisri.com/insights/articles/license-dues-trump-the-insolvency-and-bankruptcy-code/#

[57] The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. The Insolvency and Bankruptcy Code, Ministry of Corporate Affairs, available at: https://www.mca.gov.in/Ministry/pdf/TheInsolvencyandBankruptcyofIndia.pdf

Section 29 of the TRAI Act 1997.[58] Notably, the DoT had even sought a legal opinion on whether the regulator can function as a civil court, or be at power with other regulators like the CCI. While the issue has been pending for determination for many years, more recently, the regulator has changed its stance and considers the current provisions/ powers to be adequate.[59] Notably, the central and state governments have shown intent on reducing criminal provisions in different laws.[60] Examples include: The Companies Act 2013, The Limited Liability Partnership Act, 2008, among others.[61] Therefore, granting powers to TRAI to impose jail term must be viewed with extreme caution.

Accordingly, while the paper has called for penalties to be proportionate to offences, and proposes to consolidate and update the various provisions on penalties and offences, the issue on the TRAI's powers in this regard requires focussed deliberations and a CBA, to formulate a way forward. Furthermore, the new legal framework may also include provisions for providing restitution to consumers who have lost out, and disgorgement of unlawful gains on private players.

- *Public Safety and national security (Para 26)*

Situations of public emergency, public safety and interests of national security while being important,[62] must be addressed through measures which achieve the objectives in the least intrusive and restrictive manner. Having clear definitions and well-defined scope of these issues is also much needed.

While the paper has recognised the importance of telecom services for various sectors and applications, exercise of power to shut down the internet has been a practice used frequently by the government, vide the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017.[63] Notably, the United Nations Human Rights Council (UNHRC) had passed a resolution in 2016 condemning network disruptions and measures resorted by states to curb online access and/ or dissemination of information.[64] Most recently, a UNHRC report documented the 'dramatic real-life effects of Internet shutdowns on people's lives and

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[58] TRAI seeks powers to penalise telecom companies which fail to meet regulations, The Economic Times, available at: https://economictimes.indiatimes.com/news/economy/policy/trai-seeks-powers-to-penalise-telecom-companies-which-fail-to-meet-regulations/articleshow/52664684.cms

[59] TRAI doesn't need penal powers to regulate telecom sector, Communications Today, available at: https://www.communicationstoday.co.in/trai-doesnt-need-penal-powers-to-regulate-telecom-sector-chairman/

[60] Making business easy: A template to ramp-up state capacity, Available at: https://economictimes.indiatimes.com/small-biz/sme-sector/making-business-easy-a-template-to-ramp-up-state-capacity/articleshow/83598085.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

[61] Impact of Criminalising Provisions on Ease of Doing Digital Business in India, available at: https://cuts-ccier.org/pdf/dp-impact-of-criminalising-provisions-on-ease-of-doing-digital-business-in-india.pdf

[62] Paragraph 26 of the paper.

[63] Suspension Rules, Department of Telecom, available at: https://dot.gov.in/sites/default/files/Suspension%20Rules.pdf

[64] U.N. passes landmark resolution condemning internet shutdowns, Access Now, available at: https://www.accessnow.org/un-passes-resolution-condemning-internet-shutdowns/

human rights'.[65] There is perhaps a need for reworking provisions related to internet shutdowns, in line with the observations of the UNHRC.

Further, the Standing Committee on Communications and Information Technology (IT) had given several recommendations in its recent report on shutdown of telecommunication and internet services in India.[66] These include appointment of a Review Committee which acts to perform the function of checks and balances as well as selective banning of services, among others. The new legal framework may incorporate such appropriate recommendations of the Standing Committee.

Another issue requiring attention is of the government's power to intercept/ access citizens data and communication, as also reaffirmed under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021,[67] and the Information Technology (Procedure and Safeguards for interception, monitoring and decryption of information) Rules, 2009.[68] The importance of adopting principles of necessity, proportionality, and legality, as laid down by the Puttaswamy judgement,[69] cannot be overemphasised while exercising such powers. Incorporating this in the new telecom framework becomes more important, given that India currently lacks a personal data protection and privacy law. Upholding privacy intensive technologies like encryption also become imperative (as recognised by the TRAI as well, in its Recommendations on Regulatory Framework for Over-The-Top (OTT) Communication Services 2020)[70].

Lastly, it is recommended that country revises its National Cyber Security Policy 2013,[71] at the earliest, consultation on which had been initiated in 2020. This becomes crucial in light of emerging mobile communication technologies like 5G and 6G, which are poised to bring with them new age cyber-security challenges.

- *Standards (Para 27)*

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[65] Internet shutdowns: UN report details 'dramatic' impact on people's lives and human rights, OHCHR, available at: https://www.ohchr.org/en/press-releases/2022/06/internet-shutdowns-un-report-details-dramatic-impact-peoples-lives-and-human

[66] Suspension of Telecom Services/Internet and its Impact, Standing Committee on Communication and IT, available at: http://164.100.47.193/lsscommittee/Communications%20and%20Information%20Technology/17_Communications_and_Information_Technology_26.pdf

[67] Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, available at: https://mib.gov.in/sites/default/files/IT%28Intermediary%20Guidelines%20and%20Digital%20Media%20Ethics%20Code%29%20Rules%2C%202021%20English.pdf

[68] Information Technology (Procedure and Safeguards for Interception, Monitoring and Decryption of Information) Rules 2009, available at: https://www.meity.gov.in/writereaddata/files/Information%20Technology%20%28Procedure%20and%20Safeguards%20for%20Interception%2C%20Monitoring%20and%20Decryption%20of%20Information%29%20Rules%2C%202009.pdf

[69] Justice K.S. Puttaswamy (Retd) vs Union of India and Ors. on 24 August, 2017, available at: https://indiankanoon.org/doc/91938676/

[70] Recommendations on Regulatory Framework for Over-The-Top (OTT) Communication Services, TRAI, available at: https://www.trai.gov.in/sites/default/files/Recommendation_14092020_0.pdf

[71] National Cyber Security Policy -2013, Ministry of Electronics and IT, available at: https://www.meity.gov.in/writereaddata/files/downloads/National_cyber_security_policy-2013%281%29.pdf

The paper has rightly acknowledged the need for having an enabling framework for setting appropriate standards for telecom equipment and services.[72] However, the paper misses to mention that such standards must be in harmonisation with global standards/ practices. A recent example of the government pushing national standards, was seen in the case of 5G, wherein India pushed for its 5Gi technology to be incorporated as a national standard.

The Telecommunications Standards Development Society, India (TSDSI) had developed an indigenous 5G mobile communication technology. The technology was sent to the International Telecommunications Union (ITU) for evaluation, to be adopted as a standard. Notably, there was a lack of harmonisation between India's proposed standards, with the ones being finalised by the global Standard Setting Organisation (SSO), i.e., the 3rd Generation Partnership Project (3GPP), of which TSDSI is also a member.[73] The deviation risked the fragmentation of 5G technology, having the potential to lead to various unintended consequences:[74]

- Delay in 5G technology being made available in India by nearly two years, since chipset makers will have to develop two variants of the same technology for complying with two sets of standards;
- Increase in costs of 5G enabled devices for Indian consumers, due to increase in costs of production (development, testing and implementation) of fragmented 5G technology;
- Deviation from global standards hampering interoperability;
- having India specific products/ services may reduce competition, and diminish follow-on innovation, which may adversely impact not only end consumers, but other users of 5G technology as well; and
- Isolation of India from Global Value Chains (GVCs).

The imperative of having harmonised/ collaborative standards, instead of national/ unilateral standards have been well documented.[75]

Similarly, for telecom equipment, the government has proposed to mandate local hardware testing, which may have adverse implications on India's participation and contribution to GVCs, due to inadequate testing lab infrastructure and human resources, leading to delays and costs on the industry.[76] Consequently, stakeholders have raised concerns over implementing the Mandatory Testing and Certification of Telecom Equipment (MTCTE),[77] which requires all equipment to be tested at local labs before they can be installed in network rollout. There is

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[72] Paragraph 27 of the paper.

[73] A Middle Ground – 5Gi to Merge with Global 5G Standards, available at: https://www.voicendata.com/middle-ground-5gi-merge-global-5g-standards/

[74] Avoid fragmentation of 5G technology standards while bridging the digital divide, The Economic Times, available at: https://telecom.economictimes.indiatimes.com/tele-talk/avoid-fragmentation-of-5g-technology-standards-while-bridging-the-digital-divide/4322

[75] Standards Development and the 5G Opportunity – Mapping the way forward for India's telecommunications industry, CUTS International, available at: https://cuts-ccier.org/pdf/Report-Design_in_India_to_Maximize_5G_Opportunities.pdf

[76] Mandatory equipment check: Improper lab infra might delay telecom gear testing, Financial Express, available at: https://www.financialexpress.com/industry/mandatory-equipment-check-improper-lab-infra-might-delay-telecom-gear-testing/2557386/

[77] As given under the The Indian Telegraph (Amendment) Rules, 2017, Department of Telecom, available at: https://dot.gov.in/sites/default/files/06Sept.pdf?download=1

therefore a need for revisiting the MTCTE regime.[78] Notable recommendations in this regard would be mutual recognition of certification with different countries, and strengthening internal capacity.

4. The Way Forward

CUTS congratulates DoT for its forward thinking on deliberating the need for a new legal framework governing telecommunication in India. Given below are summarised recommended action points in this regard.

1. Ensure coherence of the new telecom framework with the NDCP, have a clear problem statement, ensure periodic reviews, conduct CBA before enacting provisions, and focus on implementation, transparency and accountability;
2. Ensure harmonisation of the new telecom regime with other laws such as those pertaining to insolvency and bankruptcy, mergers and acquisition, data protection, and other sector-specific regulations, through mandatory consultation between their regulators;
3. Raise awareness and build capacity of consumers, improve consumer grievance redress mechanism, and enable effective consumer choice, by partnering with credible consumers organisations, and mandating the industry to adopt of consumer broadband labels;
4. Simplify regulatory framework to ensure regulatory certainty to attract private sector investments;
5. Conduct market study before spectrum auction and licensing to evaluate the situation of the market;
6. Provide for enabling effective centre and state coordination on issues pertaining to RoW;
7. Revisit the framework for internet shutdowns in line with observations of the UNHRC, and recommendations of the standing committee on communications and IT, update the national cyber security policy, and bring in a personal data protection law; and
8. Ensure harmonisation between national and global mobile communication technology standards, revisit the MTCTE regime, and adopt three-step test of legality, necessity and proportionality before mandating government access to data.

CUTS looks forward to DoT considering the suggestions given above, and to assist DoT in its endeavour of developing a legal framework which is in tune with changing technology. For any clarifications/ further details, please feel free to contact Sidharth Narayan (sid@cuts.org), and/ or Prince Gupta (prg@cuts.org).

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[78] Mandatory equipment check: Improper lab infra might delay telecom gear testing, Financial Express, available at: https://www.financialexpress.com/industry/mandatory-equipment-check-improper-lab-infra-might-delay-telecom-gear-testing/2557386/

US·INDIA
STRATEGIC PARTNERSHIP FORUM

1 September 2022

Submission on the Consultation Paper on 'Need for a New Legal Framework Governing Telecommunication in India'

U.S. India Strategic Partnership Forum (**USISPF**) commends the Department of Telecommunications' (**DoT**) initiative to evolve a future-ready framework for the modernization of the telecommunications sector and deployment of new technologies in India. Our members make up the telecommunications ecosystem, providing equipment and services that fuel economic growth and are large enterprise users. We welcome the opportunity to share our feedback.

The Consultation Paper on the 'Need for a new legal framework governing Telecommunications in India' (**Consultation Paper**) envisages the formulation of a new law to govern the telecommunications sector. While it invites feedback on certain areas, the Consultation Paper does not clarify the scope of the proposed law and what will continue to be governed under existing law and regulation. Moreover, with respect to the telecommunications sector, both DoT and the Telecom Regulatory Authority of India (**TRAI**) are involved in the process of issuing rules on several topics. These include rules in relation to the licensing framework, use of telegraphs, quality of service, unsolicited commercial communications, interconnection, tariff review, to name a few. Therefore, in addition to this Consultation Paper, we recommend setting up an expert committee to develop a comprehensive white paper for detailed public consultation. Given the numerous regulations that govern different aspects of the telecom sector, we also request that sufficient time be provided for submission of comments on the white paper to enable increased participation of stakeholders.

Please see below our comments on some key issues identified in this Consultation Paper as well as certain additional comments.

Simplification of the Regulatory Framework and Facilitating the Ease of Doing Business

The telecom sector is currently regulated through multiple laws such as the: (i) Indian Telegraph Act, 1885 (**Telegraph Act**), which governs the establishment, maintenance and working of telegraphs in India; (ii) Indian Wireless Telegraphy Act, 1934 (**Wireless Telegraphy Act**), which regulates the possession of wireless telegraphy apparatus; and (iii) Telegraph Wires (Unlawful Possession) Act, 1950, which regulates the possession of telegraph wires (**Primary Legislations**). These legislations provide DoT with wide powers to grant a license to any person for establishing, maintaining and working of a telegraph or wireless telegraphy apparatus, as well as to notify rules relating to any matters concerning such telegraphs or wireless telegraphy apparatus. DoT could consider achieving the objectives identified in the Consultation Paper by amending the rules and licensing framework under the existing legislations. This will ensure that the telecom framework is liberalised and promotes investment, competition and innovation. Moreover, it will be in the interest of ensuring regulatory certainty and continuity.

As DoT is focusing on simplifying the regulatory framework, we request DoT to consider amending the rules framed under existing laws and the licenses. Please see below our recommendations to enhance the ease of doing business:

- Liberalise the regulatory framework by making it "light touch" and "future proof" in order to incentivise innovation and new investments in the telecommunications sector and the technology sector that powers telecom networks and their customers. This will require changes to the existing licensing framework and will entail: (i) simplifying unnecessary licensing burdens applicable to services that are not holding limited national resources (such as spectrum) and adoption of a notification regime for such services; (ii) adopting a principle-based approach that will simplify compliance and enable the adoption of new-age technologies such as 5G, internet of things, etc.; (iii) removing licensing requirements applicable to passive infrastructure, B2B services, private networks and business models that do not provide core telecom services; (iv) ensuring that any services that are provided using telecom

infrastructure, (such as providers of value-added services) must be kept out of the purview of the licensing framework; and (v) periodic review of regulatory and compliances procedures.
This approach aligns with the global trend towards reducing licensing requirements and regulatory burdens in the telecom sector. For instance, the International Telecommunications Union recommends that regulators reduce unnecessary regulatory burdens and minimise regulatory hurdles in the telecom sector[1]. Similarly, the International Chamber of Commerce recommends that regulators reduce the number of services subject to licensing, and adopt general authorisations or notification regimes to impose conditions on service providers, if necessary. [2]

While considering any changes, we request DoT to consider the fundamental difference between entities that do not perform a core telecom function, and those that provide telecom services. In light of this, we suggest that the licensing framework must be restructured and liberalised to remove unnecessary licensing burdens, especially for services that are not holding limited national resources (e.g., spectrum or numbering resources). Service providers who do not hold such national resources should not be required to obtain a license and where needed, only a light touch approach must be adopted. Specific examples of what does not constitute a core telecommunication device include: (i) devices that do not directly connect to the public network; (ii) do not provide a telecommunication service; (iii) are not used by a telecommunication provider to provide telecom services; (iv) are not relied upon by consumers for Internet or telephony connectivity; and (v) equipment that may enhance the connectivity but may not be a core network component e.g., switches, network transmission devices, cables etc.

- Encourage the creation of a competition friendly framework as a competitive telecom sector is key for the growth of a vibrant technology industry in India, which relies on the communications infrastructure. It is important that any policy and licensing framework should be framed with an objective of creating facilities-based competition in the telecom sector with non-discrimination, technological neutrality, and transparency as its core objectives. Accordingly, we suggest that the license for telecom services itself should be made technologically neutral, to ensure that future technologies and innovation are accounted for.

- Clarify what qualifies as a "telecom equipment" and what will be included under the ambit of the telecom legislations. This will also ensure alignment with internationally accepted norms of what does and does not constitute telecommunications devices and equipment subject to regulation. The globally accepted demarcation point for such consideration is device termination to a public network for either the provisioning or consumption of telecommunication services.

  We also recommend revaluating the definition of "telegraph" under the current Telegraph Act. As technology has evolved, there has been a substantial increase in smart connected products from customer premise equipment to consumer electronics and automobiles. Given that IoT products have the capability to transmit and receive data in any form, there is an increasing need to define the scope of telecom products. This is critical from the perspective of multiple telecom regulations that hardware companies are required to undertake, product testing. Therefore, we suggest that a consultation be undertaken to discuss this in further detail.

- Establish a "deemed approval" system for applications under which authorities will be provided with a specified time to scrutinise applications. Beyond the specified timelines, applications should be

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[1] International Telecommunications Union, Report of the Chairperson on the ITU Global Symposium for Regulators, 2004, https://www.itu.int/ITU-D/treg/Events/Seminars/GSR/GSR04/documents/ChairpersonReport.pdf, page 20.

[2] International Chamber of Commerce, Telecoms Liberalization: An international business guide for policy-makers, 2007, https://iccwbo.org/content/uploads/sites/3/2007/10/ICC-EBITT-Commission-Telecoms-Liberalization-An-international-business-guide-for-policymakers.pdf, page 35.

considered "deemed approved" in the absence of any express objection from the regulatory authorities. These can be implemented by making necessary changes to policies/ rules and the licensing framework, as necessary.

- Streamline the process of testing and certification through the creation of a single agency/window testing and certification system, which may be achieved through changes to the current licensing framework. A single platform for completing all formalities will reduce timelines and obviate the need for duplicative testing and certification, thereby increasing the efficiency of the administrative process.

- Converge testing and certification of devices to reduce compliance burdens, which can be achieved through close coordination between authorities such as BIS, TEC, WPC. For instance, products manufactured by OEMs are subject to rules and regulations issued by various departments and ministries including safety standard certifications, telecom equipment certifications, radio frequency related approvals, etc. This increases compliance burden on OEMs as they are required to follow varying procedures and timelines prescribed under various regulations simultaneously. Additionally, DoT should consider allowing the submission of international lab reports under the "converged process" due to device security and customer privacy concerns. A consolidated policy or regulation may be released in this regard, consolidating and simplifying the existing framework.

- Set reasonable timelines for obtaining regulatory approvals to eliminate any potential overlap between the application processing requirements established by respective authorities. Additionally, inform stakeholders in advance if there is any change / update in the process for seeking approvals.

- Introduce a systematic process of industry consultation. At present, regulatory / policy changes are often implemented without public consultation or without taking into consideration the feedback of all relevant stakeholders. This comes in the way of business certainty and disincentivises investments to the detriment of the economy. For instance, the testing and certifications requirements under MTCTE were notified without adequate consultation with industry. Such measures impede business continuity and the economy at large. In contrast, the recent DoT notification (S.O. 2372(E) issued on 24 May 2022) excluded several consumer products from the scope of MTCTE following discussions with industry. This is a step in the right direction as it contributes to the overall ease of doing business. Therefore, we request DoT to ensure that all organisations under its ambit (such as TEC), undertake transparent public consultations with all the relevant stakeholders before issuing / amending any regulatory / policy changes. Public consultations should form a core part of the telecom framework and the DoT must ensure that it is implemented in earnest.

- Independently evaluate and verify the competence and impartiality of conformity assessment bodies against recognised international standards by accreditation bodies. Such conformity assessment bodies can be in a country with whom the Government of India can enter into an agreement for reciprocal acceptance of reports by Indian conformity assessment bodies (MRA-ILAC). Existing rules may be amended to establish a standard procedure for accepting reports prepared by such assessment bodies to ease the process and provide a single uniform standard for assessment.

- Ensure protection of sensitive business information that is shared with regulators for certification purposes before the official launch of new products in the market.

- Include provisions that allow the flexibility to learn and implement best practices from other regulatory regimes as well as business friendly measures initiated and implemented by other government ministries/agencies. For instance, the Customs department has the Authorised Economic Operator (AEO) program, which enables the Customs department to identify the safe and compliant business entity in order to provide them a higher degree of assured facilitation. This segmentation approach enables the Custom department's resources to focus on less or non-compliant or risky businesses for control. This approach may be explored for issuing WPC ETA certifications for de-licensed wireless products on a self-certification basis.

Challenges in Offering Unified Communications Services in India:

The pandemic has accelerated the need for flexibility in the workplace globally, including in India. As workforce mobility has increased, there is also an increased need for flexibility in the communication technologies used by the businesses. Recently, the Government of India reformed the guidelines applicable to Other Service Providers (**OSPs**) and the use of EPABX was liberalized for business. However, regulations governing communication technologies, including cloud contact center, cloud PBX, seamless integration of communication networks of Internet Protocol (IP), and Public Switched Telephone Network (**PSTN**), amongst others, are still structured around static infrastructure. As a result, cutting edge technologies that have proliferated around the world are yet to be introduced in India. Therefore, any new framework must address this disconnect and enable innovative communication technologies to flourish. Such regulations will address the critical need of businesses, including our burgeoning start-up industry, to become truly global in nature.

At present, entities offering unified communications services face certain operational challenges. Such entities are required to obtain a UL (VNO) license, which comes with several limitations that hamper the provision of a unified communications platform to users. Some of these limitations include:

- **Limited ability to seamlessly integrate IP and PSTN networks:** Under existing regulations, cloud PBX application providers are required to obtain a Unified License or UL to bridge IP networks with a PSTN network. If this authorisation is included in the UL (VNO) License, the Cloud PBX providers will be able to bridge IP networks and PSTN with a single license. This will help reduce the compliance burdens on the Cloud PBX providers who are operating in a niche space unlike larger service providers.

- **Continuation of staggered telecom circle approach for services:** The UL(VNO) license continues to implement the conventional process of telecom circle level authorizations for providing services, which does not support the principles of a mobile workforce and internet service. Given that DOT has recognized the need for national level authorization for ISPs, by creating a Category A (national) service, the same principle can be applied to unified communication services traversing IP and PSTN technologies. This approach is followed in other jurisdictions as well. For instance, registering/licensing a communications service with the relevant Authority in the U.S., UK, Japan and Singapore automatically grants service providers the right to offer their service throughout the nation without any additional licensing requirements.

- **Single Parenting for UL (VNO) licensees:** Currently, UL(VNO) licensees are only allowed to parent with a single NSO for access service. Relying on one NSO reduces the redundancy in the network of a UL(VNO) licensee, which negatively affects the licensee's quality of service and innovation, and reduces competition in the wholesale market for network access. To address this issues, we request DoT to consider allowing multi-parenting. For instance, mobile virtual network operators (MVNOs) in the U.S. are allowed multiple parenting as they can switch between providers, even though they can use only one provider at a given time for a device.

- **Duplication of security compliances:** UL(VNO) licensees lease network capability from telecommunications service providers (**TSPs**) and internet service providers (**ISPs**). Their applications are usually built on top of networks leased from TSPs / ISPs. This ensures that the underlying carriers incur no visible loss. In fact, such solutions provide underlying carriers with an additional and steady stream of revenue from enterprise users.

In keeping with this model, VNO access licensees do not provide user identifiable phone numbers and are reliant on the NSOs to provide these resources. Currently, PSTN calls get monitored by the underlying NSO, while in case of data services the Lawful Intercept and Monitoring is covered under TEC No. GR/IPLC-01/01 JUL 2007, as a part of ISP license. However, in the cases where IP-PSTN integration requires the larger UL license, companies have to showcase LI capabilities, even when they are functioning as a simple service provider relying on other players. This issue has been dealt with in unique ways in other jurisdictions. For instance, countries such as Argentina, Colombia, Germany and the U.S. do not require communication service providers to have in-house lawful intercept capability, putting the onus on underlying NSO. Accordingly, we suggest that the UL(VNO) license is expanded to include the integration and disproportionate responsibility is not put on VNO licensees due to the expanded functionality.

Against this backdrop, we request DoT to consider the following recommendations:

- **Implementing the framework for convergence of communication technologies:** Permit the convergence of IP and PSTN traffic in the VNO network to allow flexibility to the UL(VNO) licensees and the services they offer. This aligns with DOT, NDCP, and TRAI's overarching goal to unbundle network and service layers of telecom in India.
- **Providing national level authorization for UL(VNO) Access:** Provide national level authorisation for UL (VNO) access services so that unified communications services may be delivered anywhere in India efficiently and at lower costs (similar to Category A license for ISPs). This also includes centralizing and simplifying operational components including centralizing conformance testing, and single bank guarantee for the national license.
- **Relaxing lawful intercept requirements:** Recognize the 'service provider' function of UL(VNO) licensees, and eliminate any ambiguity around the duplication of lawful intercept requirements as they are already covered under the respective NSO, and ISP networks.
- **Allowing multi-parenting:** Align UL (VNO) license with the principles of modern services such as the internet, or national/international long distance calling services, and allow multi-parenting to provide a higher quality of service and greater competition in the wholesale access market.

Spectrum Management:

Spectrum is one of the most important ingredients for wireless communication services. It has been recognized as an important tool for socio-economic development and one of the prime support services for rapid growth and modernization of an economy. We understand that DoT is looking to ease the process of spectrum allocation and utilization. We welcome DoT's efforts as this may allow entities to repurpose or rearrange their allocated frequencies to suit their business requirements and allow new entities to be granted spectrum access to deploy emerging communication technologies.

The process of spectrum allocation should be simplified and expedited to promote ease of doing business in India. When it comes to providing access to spectrum, we recommend DoT to adopt a more inclusive approach. Under the existing allocation, the requirements of telecom licensees/telecom service providers are prioritised over the spectrum requirements of other industry players. However, with new technological developments and global trends in IoT, short range devices, Wi-Fi, etc., it is important to consider other stakeholders as well.

DoT should consider allocation of spectrum to entities not performing core telecom functions such as GSaaS earth stations or enterprises that want to launch their private telecom networks. GSaaS services do not involve the provision of telecom services to public and are not similar to satellite communication services such as VSAT or GMPCS service. Hence, no new licensing framework should be imposed on GSaaS earth stations. However, if established, we recommend that the DoT/TRAI explore a light touch regulation with a simple notification or registration requirements. Most administrations, including Sweden and the U.S. already assign spectrum administratively for a GSaaS earth station.

While defining its mobile strategy, we request DoT to consider the important role of licence-exempt technologies, specifically technologies such as Wi-Fi, which are playing a key role in providing connectivity for mobile devices. Accordingly, the needs of consumers and businesses for local connectivity must be carefully considered while assessing the future demand for mobile spectrum. Moreover, while making a sufficient amount of spectrum available for mobile use (5G/6G) continues to be important, the characteristics and requirements of local connectivity and other emerging use cases need to be considered as well.

For proper inclusion of all players and optimum utilization of radio frequency spectrum, DoT may consider introducing a formalised and institutionalised process to look at and analyse requirements for all kinds of the spectrum (besides the licensed spectrum viz. 5G, etc.). DoT should consider adopting a balanced approach between more traditional methods of spectrum allocation (i.e., exclusive licensing) and newer types of spectrum allocation (e.g., licence-exempt, spectrum sharing, and dynamic allocation). During this process, it will be imperative for DoT to consider technological advances, global trends and harmonisation. Delay in allocating spectrum for non-carrier related spectrum needs tends to hamper the progress of the Indian electronics industry in terms of testing, introducing new products and meeting the market needs (both domestic and exports) and depriving Indian consumers of the best wireless technology innovations.

End-users and consumers rely on ubiquitous, high capacity connectivity, including over WiFi networks, to enjoy and make use of online services. Manufacturers of (smart) devices have an interest in developing interoperable radio frameworks to ensure that the connected device ecosystem offers a seamless and high-quality end user experience. For enterprise services, including edge connectivity solutions that are increasingly essential to a range of industry 4.0 customers in telecommunications, retail, manufacturing and hospitality, we see a need for very high capacity localised / edge networks to support innovative industrial and consumer experiences. Therefore, we suggest that the next phase of spectrum policy should on amending the existing framework in a way that reflects these three principles of ubiquity, interoperability and innovation.

Following this, DoT may consider making arrangements for reallocating and repurposing some spectrum bands to create spectrum sharing opportunities, which would eventually enable stakeholders as well as policy makers to understand spectrum efficiency. For instance, under the new regulations, a provision may be included for other non-telecom players, such as the OEMs that enables OEMs to offer wireless features to the users of its products and devices.

We also encourage DoT to pursue a globally harmonised and balanced approach, which creates room in the upper band for innovative usage on unlicensed terms. If DoT deems it necessary to protect a portion of the upper band, it should do so on lightly licensed rather than exclusive terms. Under the existing framework, spectrum is not linked with the licenses and can be separately auctioned or allotted, as per the procedure prescribed by DoT. We suggest that the existing framework must be further liberalised to identify the various ways in which spectrum may be utilised for non-commercial purposes by new-age and emerging technologies outside of the Unified Licensing framework. Further, certain non-telecom spectrum or frequency must be liberalised and be permitted to be used as de-licensed spectrum to ensure innovation, subject to baseline conditions like non-interference.

We suggest that DoT should consider undertaking an examination of the potential bands and revise the National Frequency Allocation Plan 2018 (NFAP 2018)3 to match global developments in this regard. The proposed reforms could consider liberalising unlicensed spectrum for innovations, advanced wireless solutions, private 5G networks and evolved device ecosystem for applications and use. Certain bands such as the E band and V band4 may also be liberalised in line with global standards to ensure that innovation

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[3] https://dot.gov.in/sites/default/files/NFAP%202018.pdf?download=1

[7] https://cag.gov.in/webroot/uploads/download_audit_report/2020/Report%20No.%204%20of%202020_Eng-05f808ced3a8165.55898472.pdf#page=50

[4] The spectrum in E (71-76 GHz and 81-86 GHz) and V (57-64 GHz and 64-71 GHz) bands has the potential to provide high-speed broadband services.

in the sector is not stifled. Additionally, as mentioned above, other bands may be identified and liberalised which can be used by emerging technologies. Liberalisation of spectrum aligns with the National Digital Communications Policy - 2018 (NDCP), which aims to harness the power of emerging digital technologies, including 5G, AI, IoT, Cloud and Big Data to enable provision of future ready products and services, and recognizes the need for identifying and making available new spectrum bands for access and backhaul segments.

Further, given that extensive coordination between TRAI and DoT is required to undertake consultations, TRAI may be empowered to undertake suo moto spectrum consultations for areas that lie beyond spectrum needed by service providers. DoT could also consider expeditiously looking into/evaluating de-licensed spectrum requirements and sending references on de-licensed spectrum to TRAI based on its own assessment and/or requests from the industry.

Standards, Public Safety and National Security

We recommend the adoption of global standards in India for upcoming technologies. Adoption of global standards will benefit Indian manufacturers as it will enable them to introduce Indian products and solutions to the global market. This will also prevent fragmentation as manufacturers will not be compelled to cater to a different standard to introduce products in the Indian market.

Accordingly, we request DoT to encourage Indian R&D institutes, universities and start-ups to contribute to international standards viz 3GPP, IEEE, etc. rather than developing separate domestic standards that would have limited acceptability in the global space. Instead of tweaking global standards, we recommend addressing unique Indian requirements and solutions within the framework of the global standards.

To take forward the stated goals in the Consultation Paper, we recommend embracing global best practices best suited for the rapid development and deployment of new technologies in the telecommunications sector. Such best practices include:

- Continued adoption of globally, harmonized EMC & Safety standards;
- Adopting conformity acceptance procedures modeled on practices in the EU, N. America, Australia, New Zealand, Japan etc., such as manufacturer Declarations of Conformity (DoC), supplier Declarations of Conformity (SDoC) or other self-certification and labeling procedures;
- Establishing a system of accrediting both domestic and foreign test laboratories in a mutual recognition arrangement (MRA) utilizing accrediting bodies such as NVLAP, A2LA, ILAC etc.;
- Creating a system of mutual acceptance of EMC, Safety and Telecom reports and data from all test labs accredited by said bodies without the requirement of repeat, in-country testing in India;
- Adopting a system of conformity assessment procedures for out of scope or exempt devices conducted by accredited bodies that result in Letters of Opinion or other such documentation suitable to prove exemption status at customs; and
- Establishing a system of enforcement that reserves the right of the Indian Government and related agencies to monitor compliance of telecommunications products by inspection and / or testing using internationally accepted statistical sampling techniques.

Treatment of Consumer Electronic Products:

While updating the existing telecom regulations, we recommend addressing end-user consumer electronics separately as they are different from core telecom products and solutions. Currently, the wide definition of 'telegraph' under the Indian Telegraph Act, 1885 brings ICT equipment and various consumer electronic products within the ambit of telecom and telecom equipment related regulations. However, as the regulations evolve, several factors need to be kept in mind with respect to end-user consumer electronics, including, their unique requirements, shelf life, supply chain logistics, procurement and purchase channels, product lifecycle (both hardware and software) etc. Additionally, several end-consumer products and solutions are getting integrated with the internet, including autonomous and self-driven cars, smart ACs and smart fridges. Accordingly, we recommend that such products along with smart phones should not be subject to the same telecom rules and testing requirements as core telecom equipment which forms an integral part of a telecom/mobile network.

Universal Service Obligation Fund (USOF):

We understand that DoT is considering overhauling the existing USOF and replacing it with a Telecommunication Development Fund (TDF). Prior to this, we suggest that DoT should: (i) identify the purposes for which USOF funds are utilized; (ii) study the effectiveness of USOF; (iii) identify challenges to USOF's implementation; (iv) develop mechanisms to ensure that such funds are utilized for their intended purposes (i.e., for telecom connectivity projects in rural and underserved areas); (v) crystallize the purposes for which the TDF would be used along with fetters to ensure that the funds are utilized effectively and disbursed for their intended purposes; and (vi) ensure that TDF is agnostic to the origin of companies and must be used for the growth of all companies in the technology space, which contribute to the growth of research in India.

We suggest that a consultation for the creation of any other fund such as TDF must be carried out separately, and any fund utilisation must be based on globally accepted principles of non-discrimination, level playing field, transparency, etc. Further, any such use must be agnostic to the origin of companies and must allow for the growth and fair competition of all companies in the technology space, which contribute to the growth of research and growth of India. This must also be aligned with India's international trade law obligations. For instance, we note that the Consultation Paper proposes to use the USOF for the growth of indigenous companies in the technology space. Any provisions such as this should be compliant with India's World Trade Organization (WTO) obligations, including its National Treatment and Most-Favored Nation commitments.

Right of Way:

We agree with DoT on the importance of Right of Way (RoW) regulations to provide for establishment of telecom infrastructure in a non-discriminatory manner and set out a process for dispute resolution in relation to RoW. However, we submit that such proposed changes do not require an amendment /overhaul of the Primary Legislations. Sections 10-15 read with Section 7 of the Telegraph Act provide DoT with the authority to maintain a telegraph line on any immovable property, subject to permissions provided by local authorities, and publish rules in this regard. Currently, the Indian Telegraph Right of Way Rules, 2016 regulate the establishment of underground infrastructure (optical fibre) and overground infrastructure (mobile towers and telegraph line) by licensees. Therefore, we suggest that the stated objectives with respect to RoW may be achieved through suitable amendments to these rules.

Penalties:

The existing telecommunications rules and regulations impose penal sanctions in cases of non-compliance. As DoT evaluates the penal provisions under the current regulations, we recommend:

- All laws/regulation applicable to the telecommunication sector should be identified and a proportionality-based penalty scheme should be introduced. This system would involve fines and liquidated damages, which would be imposed based on the gravity of the violation.

- No penalties should be levied during certain stages such as the testing phase, software upgrades, database clean up, etc.

- Similar categories of minor violations or errors such as malfunction of software application and database structure/corruption should be clubbed.

- Harsh penalties, such as cancellation of licenses/registrations, may be exercised as a last-resort for instances of non-compliance.

- Use of positive re-enforcement to encourage compliance. For instance, DoT could consider rewarding stakeholders for adhering to existing rules/regulations/guidelines. This approach will improve the overall compliance environment in the industry by encouraging non-compliant organizations to move to the compliance regime voluntarily. Setting precise timelines on portals and creation of compliance checklists can assist relevant authorities in tracking compliance, which will enable faster approvals for complaint entities. Moreover, charging a lower rate of physical inspections of the imported/exported goods, faster release of shipments, and deferred payment of duties, may be considered to encourage applicants to meet the compliance criteria and demonstrate the security of the supply chain.

- We also recommend that a separate consultation on penalties be undertaken. There may be a need to clearly attribute and cap penalties for various categories of offenses to ensure that stakeholders have proportionate exposure. For instance, an infrastructure provider should have different exposure than a UAL licensee. We request that the government identifies and publishes a detailed consultation paper about such offences.

Additional Comments:

Satellite Communications:

In addition to new technologies such as 5G and IoT, which are referenced in the Consultation Paper, we believe that satellite communications will play a key role in spearheading telecommunications coverage and connectivity in India. Global trends indicate that satellite communications is the next step in the evolution of the telecommunications space as is evidenced by advancements such as High Throughput Satellites and Low Earth Orbit Satellites. As satellite communications can play a pivotal role in bridging the digital divide throughout India, including remote/rural locations, we request that a clear and specific legal framework be formulated to govern this sector, which can provide sufficient legal certainty and clear guidance in this technologically evolving sector.

We also recommend that any new legal framework should promote the growth of this sector as a vital player in India's telecommunications growth trajectory. This can be achieved by encouraging private sector participation in a liberalised manner to carry forward and realise the potential of this mode of delivery of broadband throughout India by augmenting satellite capacity available for the vital connectivity services that satellite communications provide.

The New Space Policy 2022 is a welcome step as it promotes greater private sector participation in the satellite sector, including in the manufacturing space. As a next step, we request the Government to promote a competitive and level playing field for private players in the satellite communications space through a consolidated legal framework governing the satellite communications. We recommend the creation of simplified framework that has time bound procedures and clear guidelines on various aspects such as the licensing of space technologies for commercial applications and use of non-Indian orbital resources. We suggest that a single authority should govern all aspects related to this sector so as to avoid confusion and delays. We also recommend that the legal framework governing the satellite sector must be technology neutral and transparent so that such legal framework is stable in the face of various technological innovations.

Miscellaneous:

We recommend that aspects such as mergers and acquisitions and insolvency in the telecommunications sector must be dealt with under existing legislations to the extent that sufficient provisions already exist. The provisions of the Companies Act, 2013 along with the Insolvency and Bankruptcy Code, 2016 have been enacted after years of consultation and are sufficient to achieve the objectives. Given this, we recommend that there be no special provisions to deal with aspects such as insolvency because existing laws and regulations provide for sufficient mechanisms. Carving out a separate regime for licensed entities may result in overlap and regulatory uncertainty. Therefore, any attempts to simplify the process for merger and acquisitions, clarify the jurisdiction of regulators or address issues specific to telecoms/digital communications may be achieved through changes to the existing licensing framework or subordinate legislation.

ITU-APT
Foundation of India
ITU's Association of India

Dated: 01-09-2022

Comments of the ITU-APT Foundation of India
on
Consultation Paper released by DoT on 23-07-2022 regarding "Need for a new legal framework governing Telecommunication in India"

Executive Summary

Department of Telecom on 23-07-2022 released a Consultation Paper regarding the need for a new legal framework governing Telecommunication in India, as presently the entire Telecommunication Network is mostly governed by Indian Telegraph Act, 1885, a 137-year-old Act. ITU-APT Foundation of India (IAFI) has considered the consultation paper and provides our comments. Our Comments are structured in following seven sections.

We would also like to request that industry comments should also be sought when draft laws are ready before they are passed by the Indian parliament.

The key focus of our Comments is:

- Need for licensing to attract more investments and implementation of innovative technologies in last mile networks
- Exemption from licensing of captive indoor/in campus wireless networks
- More Frequency bands to be added for unlicensed indoor usage such as 6GHz WI-FI6e and V band Wi-Gig
- Ease of accessing Radio frequency spectrum with suitable strengthening of WPC, the spectrum management authority
- Separate licenses for Private LTE/5G for SDCA or even smaller areas
- Support for licensing of private sector satellite based communication infrastructure in a big way to make broadband internet available in remote locations
- Separate Licensing for facility based networks and easier licensing for service providers without facilities.
- Broadband policy to be at forefront wherein all media (terrestrial and space) should be encouraged without any discrimination and with respective global practices in place
- Importance of Spectrum policy roadmap to be recognized within the framework. ITU harmonisation , alignment with global practice as key tenets.

Spectral efficiency that can be achieved in older/legacy bands could be recognised and quantified before further assignment

- Satellite/Space use of spectrum needs to be administratively assigned to satellite and space service operators as per global practice
- Exclusive and non-exclusive (shared) utilization of spectrum resource to be recognized within the framework
- Ease of doing business and enhancement to policies that encourage FDI in India should also be a focus of the enabling framework
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1. About IAFI

ITU-APT Foundation of India (ITU-APT) is a non-profit, non-political, non-partisan industry foundation registered as a society under the Societies Registration Act, 1960. ITU-APT is working for last 18 years with the prime objective of encouraging involvement of professionals, corporate, public/private sector industries, R&D organizations, academic institutions, and such other agencies engaged in development of Indian Telecom sector in the activities of the International Telecommunication Union (ITU) and the Asia Pacific Telecommunity (APT).

The Foundation has been recognized as an International/Regional Telecommunications Organization by the International Telecommunications Union (ITU). ITU-APT is also having close working relations with similar organizations in many other countries including, Japan, Indonesia, and USA.

Our members include many stalwarts of the telecom sector including many previous secretaries, members, advisors and DDGs of the DOT and Telecom Commission. We also have many corporate members from India and *other countries including operators, vendors. The foundation has been responding to various government consultations in the past.*

For any further information please see our website https://www.itu-apt.org/ or contact Mr. Ashish Chaudhary, Sr. Manager of the Foundation at +91 70172 10403 or info@itu-apt.org

2. General Suggestions for New telecom law

1. The Indian Telegraph Act 1885 is quite versatile piece of Legislation. It has withstood the test of time (with only minor amendments) for more than 135 years. Very few countries in the World might have a similar versatile Act. The definition of 'Telegraph' in this act is very broad, encompasses all means of telecommunication, even the futuristic Free Space Optics for communications. Section 4 of the Act provides all necessary powers to the Government. It has allowed Telecom liberalization and privatization, etc.

   However, it is felt that the word 'Telegraph' is very old and does not represent the modern telecom. Therefore, the new law should be titled "Indian Telecommunications Act". The other option is to call it "Digital Communications Act". However, the same is not considered appropriate as it would exclude analogue communications or other future forms of communications, which may or may not be digital.

   Further, Broadcasting should be kept out of this act and covered by a separate act under Ministry of I&B.

2. The proposed new Act should be **simple** and details for specific activities/ aspects of different telecom services should be part of **Rules** which can be framed under the Act as it is much easier to amend the Rules, as compared to amending the Act. New Law should therefore allow formation of Rules for various services/ aspects. The existing service rules should be amended along with the new law.

3. A short 'Preamble' should be included in the beginning of the Act, to indicate the broad 'Objective' of the Government from this Act; This can be suitably drawn from NDCP-18:

   This Act supports the development of national digital information infrastructure and provision of telecom services to consumers, industries, enterprises, and government agencies. Digital information infrastructure is increasingly emerging as a key enablers and critical determinant of a country's growth and well-being. The objective of this Act is to lay out consistent guidelines, rules, and principal framework for provision of telecom services to all, focusing on the needs of a changing India, by encouraging and supporting private and public investments in building the digital information infrastructure. The Act also aims to encourage Research and development and local manufacturing of Telecom equipment in the Country.

4. The radio frequency (RF) Spectrum can provide the best benefits for the country, if managed/ engineered in an integrated manner for the whole country. Considering the vast area of the country and large population, the management authority, the WPC Wing, needs to be strengthened and converted into a separate, independent department of the Ministry. The Act should make it mandatory for the spectrum regulator to publish Annual National Frequency allocation plans as well as five-year spectrum outlook on a regular basis.
5. The Act should provide for the following three main types of licenses, which should be clearly defined in the Act:
    a. Facilities Based Operator (FBO) License, including Nationwide universal public access network License, Captive non-public network access licenses, Local Area Public Network Licenses, non-terrestrial network licenses including Gateway Earth station licenses, other facility-based service licenses such as PMRTS, GMPCS and IP based network licenses (such as call centers)
    b. Service Based Operator (SBO) Licenses such as Virtual mobile operators, and specific IP based service providers. These Operators do not own any telecom equipment but only provide service to the users.
    c. License exempt services

6. The act should also make it clear that no license is needed for use of any telecommunications network within any premises owned or occupied by any person for its own use.
7. The Act should have a separate section on licensing of non-terrestrial networks including satellite Gateway Earth stations, HAPS, and HIBS stations as well as Indian owned and Registered Satellite space stations. Necessary rules should be framed for registration of such systems owned and operated by private/public companies with ITU Radio Communications Bureau (BR).

8. The economic penalties can also be part of various Rules (rather than in the Act), so that the amount of Fine/ Penalty can be reviewed and revised every 5 – 7 years, as per changes in economic situation.

9. Further, details regarding USO (Universal Service Obligation) Fund can also be transferred to Rules under the Act. A broad, brief section regarding 'Development of Digital Information Infrastructure' in the country for desirable socio-economic growth of the nation (by using USO Fund and/ or funds from the national exchequer), should be included in the main act.

10. R & D in all aspects of Telecom, including research into Vedic knowledge in the field of telecom needs to be encouraged, through suitable inclusion of its reference in the Preamble or in the section on R&D. All equipment needed for R&D purposes should be freely available without any restriction of any kind.

11. Persons registered as Dealers and holding Dealer's Possession License (DPL) should be able to procure/import and hold all telecom equipment as needed without any restrictions, for supply to license holders.
12. The act should also have supporting sections on the recognition of principles of Net Neutrality, support for Prime Minister's Wi-Fi Access Network Interface (PM-WANI) and license exempt Wi-Fi services in various bands including 6GHz and 60 GHz.
13. There is urgent need now to enhance the scope of telecom infrastructure providers. On several occasions, Telecom Regulator has also been recommending for Enhancement of IP-1 scope to include active elements such as Antenna, Feeder Cable, Base Station Transmission System, RAN, Small Cells, IBS, Edge Data Centers, etc. Therefore, in the new law, the scope of IP-1 registration should be expanded, and all eligible service providers should be allowed to obtain infrastructure from IP-1. Further, the scope of IP-1 should include, but should not be limited to ROW, Duct Space, OFC, Tower, Feeder Cable, Antenna, Base Station, IBS, DAS etc. A neutral host like IP-1 not only provides the required network infrastructure in a cost-efficient manner, but also allow operators faster time-to-market, besides attracting investments. However, IP-1 scope shall not include core network elements such as Switch, MSC, HLR, IN etc.
14. Importance of Spectrum policy roadmap to be recognized within the framework. ITU harmonization, alignment with global practice as key tenets. Spectral efficiency that can be achieved in older/legacy bands could be recognized and quantified before further assignment
15. Satellite/Space use of spectrum needs to be administratively assigned to satellite and space service operators as per global practice
16. Exclusive and non-exclusive (shared) utilization of spectrum resource to be recognized within the framework
17. Ease of doing business and enhancement to policies that encourage FDI in India should also be a focus of the enabling framework

3. Main points in the DoT Consultation Paper 23-07-2022.

(1) Introduction - Need of new Legal Framework - Para 1 to 6.
(2) What new law needs to address – Para -7 and 8.
(3) Simplification of Regulatory Framework – Para- 9 to 13.
(4) Spectrum Management – Para 14 to 17.
(5) Right of Way – Para -18 to 20.
(6) Merger and Acquisition – Para 21.
(7) Insolvency - Para 22 to 23.
(8) Expanding USOF – Para -24.
(9) Penalties – Para – 25.
(10) Public Safety and National Security – Para 26 to 27.

3. Details of various Section of India Telegraph Act, 1885

1. Part – I - Preliminary
    - Section 1- Name of the Act.
    - Section 2- Applicable Area.
    - Section 3- Definitions.
2. Part-II
    - Section 4 - Grant of License
    - Section 5 - Govt. To take possession of License Telegraph and Interception.
    - Section 6- Establish Telegraph of the land of Railway Company.
    - Section 6A- Rates for International Messages
    - Section 7 - Power to make Rules.
    - Section 7A - Saving the existing Agreements.
    - Section 7B - Arbitration of Disputes.
    - Section 8 - Revocation of License.
    - Section 9 - Govt. not responsible for Loss or Damages.
3. Part –III
    - Section 10- Power to place Telegraph Lines and Post.
    - Section 11 - Power to enter in property for repair of Telegraph.
    - Section 12 - Power for Local Authority to give permission.
    - Section 13 - Power of Local Authority for removal/alternation of telegraph.
    - Section 14 - Power to alter position of Gas or Water Pipeline and Drain.
    - Section 15 - Dispute between Local Authority and Telegraph Authority.
    - Section 16 - Compensation of property other than local authority.
    - Section 17 - Removal or alternation of telegraph other than local authority.
    - Section 18 - Removal of Trees interrupting telegraph.
    - Section 19 - Telegraph lines before passing the Act.
    - Section 19A- Person likely to damage telegraph line.
    - Section 19B - Power to confer the telegraph authority power to licensee.
4. Part IV – Penalty
    - Section 20 - Establishes un-authorize Telegraph.
    - Section 20A - Breach of Condition of License.
    - Section 21 - Using un-authorized Telegraph.
    - Section 22 - Opposing establishment of telegraph on Railway land.
    - Section 23 - Entering into signal room, trespassing.
    - Section 24 - Un-lawfully learning the content of message.
    - Section 25 - Intentionally damaging the telegraph.
    - Section 25A - Interference with telegraph.
    - Section 26 - Telegraph Officer disclosing/divulging the message.
    - Section 27 - Telegraph Officer fraudulently sending the message.
    - Section 28 - Misconduct.

Section 29 - Sending Fabricated Messages.
Section 29A - Penalty for above.
Section 30 - Retaining a message.
Section 31 – Bribery.
Section 32 – Attempts to commit offences.

5. Part – V – Supplementary Provisions
    Section 33 - Requirement of additional police forces.
    Section 34 - Law for Part B States.
    Section 34A - Application of the Act to Presidency Town.

4. Developments in the Indian telecom in the recent years

Presently, the Indian Telecom Scenario in governed mainly by the following four Acts.

1. The Indian Telegraph Act, 1885 ("Telegraph Act") came into force on 1st October 1885.
2. To regulate the possession of wireless telegraphy apparatus, the Indian Wireless Telegraphy Act, 1933 ("Wireless Telegraphy Act") came into effect on 1st January 1934.
3. Similarly, to regulate the possession of telegraph wires, the Telegraph Wires (Unlawful Possession) Act, 1950 ("Telegraph Wires Act") came into effect on 1st April 1951.
4. In addition to this, all present Licensees must comply the directions regarding Tariff and Quality of Services, issued by TRAI, a regulatory body constituted under TRAI Act, 1997.

Department of Telecom draws power mainly through the Indian Telegraph Act, passed by British Parliament in 1885, almost 137 years ago. At that point of time, only Telegraphic Messages and Voice Communication were existing. After NTP-1994, Licenses were issued to private players for basic access services and after NTP-1999, with the inception of mobile services and Internet, entire Telecom scenario has been drastically changes.

Since then, various new services like Mobiles, Messaging Services, and Internet have been added and many more new services likely to be added in near future. Mobile Services and Internet has further changed the entire telecom scenario and now Telecommunications became as Information and Communication Highway with the start of thousands of e-services by various government departments and private companies. Very soon, 5G services will roll-out in India and many new dimensions viz IoT, Mobile Edge Computing (MEC), Machine to Machine (M2M) Communication Services, AI, Cloud Computing and Cyber Security will be added.

The telecommunications sector has undergone a major process of transformation through significant policy and reforms. Following major developments taken place in the Indian Telecom Scenario and needs to be reflected in the proposed Telecom Act.

1. Presently, Central Government or Department of Telecom does not provide any Telecom Service directly to the end user, as telecom services are provided by two government PSUs viz BSNL/MTNL and number of Private Telecom Service Providers.
2. On 25-02-2012, a new PSU Bharat Broadband Network Limited (BBNL) was created for establishment, operation and maintenance of BharatNet, a middle-mile GPON

network from Block to Gram Panchayats/Villages. BharatNet is a Govt. of India Network, established, maintained and operated by BBNL. Entire project is funded by USOF.

3. For Telecom Licensing and Enforcement, entire country is divided in 22 LSAs and Licenses for Basic/Mobile Telecom Services are issued LSA-wise. (22 –LSA & 322 – SSA)
4. Now, DoT provides only one type of License i.e., Unified License for providing one or more types of telecom services. Licensee can take authorization to provide one or all 12 categories of telecom services.
5. Internet Service Providers (ISPs) are given three types of Licenses viz Category –A (PAN India), B (Telecom Circle and four Metro Cities) and C (SSA).
6. License and Spectrum have been separated now. Any Licensee, if willing can acquire spectrum from DoT independently.
7. In June 2016, the Department of Telecom introduced a new license category called the Unified License (Virtual Network Operator) (VNO). Through this license, the DoT finally permitted the launch of virtual network operator services in India, whereby licensed virtual network operators can, without owning their own telecom infrastructure, re-sell the telecom services obtained from regular telecom operators.
8. Telecom Regulatory Authority of India (TRAI) was established through TRAI Act, 1997.
9. The Telecom Disputes Settlement and Appellate Tribunal (TDSAT), was also established (under TRAI Act, 1997) to adjudicate disputes and dispose of appeals with a view to protect the interests of service providers and consumers of the telecom sector and to promote and ensure orderly growth of the telecom sector.
10. DoT in Sept 2017 issued amendment in the Indian Telegraph Rule- 1951 regarding Mandatory Testing and Certification of Telecommunications Equipment (MTCTE), considering security threat from Chinese Telecom Equipment. Some new Section is to be added in the proposed Act. This should include international standards for product compliance, cyber security, testing through certifying Indian Accredited Labs designated by the TEC.
11. DoT in Aug 2017 issued rules to regulate the Temporary Suspension of Telecom Services due to Public Emergency or Public Safety. Some new Section is to be added in the proposed Act.
12. DoT in May 2017 issued a Notification regarding provisioning of Submarine Optical Fiber Cable connectivity between Mainland India (Chennai) and Union Territory of Andaman and Nicobar Islands. More such cables will be laid in future. Capital Expenditure incurred will be borne by Central Government/DoT and will be funded by the Universal Service Obligation Fund. Some new Section is to be added regarding Submarine OF Cable in the proposed Act.
13. In 2018 the National Digital Communications Policy (NDCP) was released by the DoT. The policy seeks to prioritize universal access to digital communications over revenue generation. The policy also recognizes the trend of 'convergence' of communication technologies (voice, broadcasting and data) into the singular medium of data.
14. On 14th December 2018, the DoT issued the Flight and Maritime Connectivity Rules, 2018. These Rules have introduced a new category of service called the In Flight and Maritime Connectivity Service (IFMC) for facilitating Wi-Fi services on ships and aircraft. The Rules permit licensees holding certain service authorizations to offer IFMC services. The Rules also permit international airlines, international shipping lines

or other Indian companies to offer IFMC services after tying up with eligible Indian telecom licensees.

15. Information Technology Act 2000 (IT Act 2000) - In light of technological advancements, this legislation was introduced to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication. In 2008, this Act was amended and a new provision was inserted, which defines a "communication device" as a cell phone, personal digital assistance or combination of both or any other device used to communicate, send or transmit any text, video, TV channels, audio or image. With this new provision, the telecom communications are covered by the IT Act 2000.
16. On 31st July, 2018 DoT issued "Regulatory Framework on Net Neutrality", to ensure that the regulatory framework on Net Neutrality adheres to the fundamental principles and concepts of Net Neutrality, which clearly says that Internet accessibility and availability to all must be without any discrimination. Internet Access Services, therefore, need to be governed by a principle that restricts any form of discrimination, restriction or interference in the treatment of content, including practices like blocking, degrading, slowing down or granting preferential speeds or treatment to any content.
17. Wi-Fi Hotspots are being developed in huge number by private players and Central Government/ DoT (especially in Rural Area). Some regulation needs to be added in the proposed Act for using de-licensed spectrum of 2.4 GHz and 5.0 GHz. More de-licensed frequency bands in 6 GHz and 60 GHz should be added for promoting Wi-Fi.
18. Telecom Equipment from Trusted Telecom Source - The Union Cabinet had accorded approval for the National Security Directive on Telecommunication Sector on 16th December 2020. Consequently, with effect from 15th June 2021 the Telecom Service Providers (TSPs) are mandatorily required to connect their networks only those new devices which are designated as 'Trusted Products' from 'Trusted Sources'. Necessary amendment had been made by the Government in this regard to the license conditions for the provision of telecommunication services by the TSPs.
19. There is now the urgent need for enhancement of scope of Telecom Infrastructure providers. All industry and Government stakeholders unanimously agree that scope of IP-1 registration should cover both passive as well as active infrastructure to encourage deployment of common sharable infrastructure and the same needs to be implemented at the earliest. NDCP-2018 gazette notified by the Government in Oct'2018 envisage enhancement of scope of IP-1 vide para 1.1(f) as below: "Encourage and facilitate sharing of active infrastructure by enhancing the scope of Infrastructure Providers (IP) and promoting and incentivizing deployment of common sharable, passive as well as active, infrastructure." Even TRAI also recommended to the Government for IP-1 scope enhancement and promoting deployment of common sharable, passive as well as active infrastructure, vide its recommendations dated 2-Feb-2018 on "Inputs for formulation of NDCP-2018".

5. Telecom Act of various countries:

1. New Telecom Act was introduced in Canada in 1993, replacing the Railway Act, 1906, which also governs the Telecom Services.

2. In USA, first major overhaul of Telecommunication Law was done after 62 years and Telecommunications Act of 1996 was introduced.
3. In UK, new Communication Act, 2003 was introduced superseded old Telecommunication Act, 1984.
4. In Australia, new Telecommunication Act was introduced in 1997.
5. In Brazil, new Telecommunication Law was introduced in 1997.
6. In Mexico, Telecommunication Act was introduced in 1996.
7. In Germany, new Telecommunication Act, 2021 has been introduced.

Considering Indian Telegraph Act, 1885 as 137 years old legislation and new legal framework is very much required; DoT released a Consultation Paper and requested comments from all the stake holders to develop a new Legal Framework. In order to meet the existing and new challenges, it is very important to have a modern and future-ready legal framework which addresses the realities of telecommunication of 21st century in India. Enclosed please find our suggestions for a new telecom law to replace Indian Telegraph Act 1885

Section 6 – General suggestions for the New Telecom law
Section 7 - Comments of IAFI on existing Indian Telegraph Act

6. Comments of IAFI on existing Indian Telegraph Act

PART- I

1. **Section (1)** - Name of the Act - should be **Indian Telecommunications Act, 20xx.**
2. **Section (2)** - Word "Telegraph" appearing repeatedly in the Indian Telegraph Act should be replaced by **"Telecommunications"**.
3. **Section** 3(1) - *"telegraph" means any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, visual or other electro-magnetic emissions, Radio waves or Hertzian waves, galvanic, electric or magnetic means.*
   Explanation. "Radio waves" or "Hertzian waves" means electro-magnetic waves of frequencies lower than **3,000 giga-cycles** *per second propagated in space without artificial guide;*

   REVISED Section 3 (1) –

   "telecommunications" means any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, video, writing, images and sounds or intelligence of any nature by wire, cable (including optical fiber cable), visual or other electro-magnetic emissions, Radio waves, galvanic, electric or magnetic means.

   Explanation. "Radio waves" means electro-magnetic waves of frequencies lower than 3,000 GHz.

Section 3 (2) - *"telegraph officer" means any person employed either permanently or temporarily in connection with a telegraph established, maintained or worked by [the Central Government] or by a person licensed under this Act.*"

REVISED Section 3 (2) –

Section 3 (2) - *"telecommunications officer" means any person appointed by the Central Government in connection with a telecommunication network or by a person licensed under this Act*

As the Telecom Network is mostly installed and maintained by private players, the Telecom Officer– should be a person appointed by the Central Government with the consultation with Licensee, for installation and maintenance of the Telecom Network.

Provision given Under Section -19 (B) of this Act may be used by the Telecom Authority.

Section 3 (3) – *"message" means any communication sent by telegraph, or given to telegraph officer to be sent by telegraph or to be delivered".*

REVISED Section 3 (3) –

"message" means any sign, signal, writing, image, intelligence, or information of any nature *transmitted* or received through telecommunications

REVISED Section 3 (4) –

Telecommunications Network" means any telecommunication Line, wire, or telecommunication cable (any cable of a telecommunication system including Optical Fiber Cable), Telecommunications Equipment (any appliance, apparatus or accessory used or intended to be used for telecommunications) for transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature by wire, radio, optical or other electromagnetic systems whether or not such signs, signals, writing, images, sounds or intelligence have been subjected to re-arrangement, computation or other processes by any means in the course of their transmission, emission or reception;

REVISED Section 3 (5)

Section 3 (5) - Telecom *Network also includes any auxiliary or supporting structures such as ducts, enclosures, stays, struts or other above or below ground contrivance for carrying, suspending, or supporting a telecom network*

Section 3 (6) - *"telegraph authority" means the Director General of [Posts and Telegraphs], and includes any officer empowered by him to perform all or any of the functions of the telegraph authority under this Act.*

REVISED Section 3 (6) –

Section 3 (6) - Telecom Authority of India means Director General Telecommunication (DGT), appointed by the Minister of Communication *and includes any officer empowered by him to perform all or any of the functions of the telegraph authority under this Act.*

Section 3 (7) and (8) - No changes are required.

New Section to be added: -

Section (3) (9) –

Designation of Public Telecommunication Licensees.

The Telecom Authority may, with the approval of the Director General Telecommunications or Minister of Communication, designate any person who has been granted a license under section 4 as a Public Telecommunication Licensee to perform all or any of the functions relating to the operation and provision of telecommunication systems and services in India within the exclusive privilege of the Authority under this Act.

PART- II

PRIVILEGES AND POWERS OF THE GOVERNMENT

4. **Section (4):**

1. Power to License Telecommunication Systems and Services.

This section requires completer overhauling.

We suggest the following: -

(a) There should be three types of licenses defined in the Act:

I. Facilities Based Operator (FBO) License.
    i. National wide universal public access network License
    ii. Captive non-public network access licenses
    iii. Local Area Public Network Licenses
    iv. Other facility-based service licenses such as PMRTS, GMPCS

    v. IP based network licenses (such as for call centers)
  II. Service Based Operator (SBO) License.
    i. Virtual mobile operators
    ii. Specific IP based service provider (such as licensees providing IPTV)
  III. License exempt services

(b) No License is needed for use of telecommunications for use within any premises owned or occupied by any person for its own use.

(c) A License may, with the consent of, or in accordance with the terms of a general authority given by the Minister of Communications, be granted by the Authority (DGT) either unconditionally or subject to such conditions as the Authority may impose and specify in the license and either irrevocably or subject to revocation as therein specified for the running of such Telecommunication Systems and Services falling within section 3 as are specified in the license.

(d) A license granted under subsection (a) (I) above may be granted either to any person, class of persons or a particular person, and may include (without affecting the power to impose conditions conferred by that subsection) conditions requiring the licensee to enter into agreements or arrangements with any person, class of persons or another telecommunications licensee for: -
  (i) the interconnection of, and access to, telecommunication systems.
  (ii) the sharing of installation or plant used for telecommunications belonging to any telecommunication licensee; and
  (iii) such other purpose as may be specified in the license.

and on such terms and conditions as may be agreed to by the licensee and such other persons or licensees or, in default of agreement, as may be determined by the Authority.

(e) the licensee to comply with any direction given by the Authority as to such matters as are specified in the license or are of a description so specified;

(f) the licensee to comply with codes of practice and standards of performance that are applicable to the licensee; and

(g) the licensee to do, or not to do, such things as are specified in the license or are of a description so specified.

(h) The grant of a license under subsection (a) is subject to the payment to the Authority of such fees for the grant of the license as may be prescribed.

(i) A licensee must also pay to the Authority for Universal Service Obligation" charges as may be determined by the Central Government after considering the recommendations made in this behalf by the Telecom Regulatory Authority of India (TRAI)

(j) A licensee is not entitled for the refund of any fee paid under subsection (g), if the license is cancelled or suspended, or the period of the license is reduced or the license is terminated at the request of the licensee.

(k) The grant of license under this section is at the discretion of the Authority.

(l) This does not prevent the Minister of Communication from directing the Telecom Authority (DGT) to grant a license in any specific case.

IN ADDITION TO THE ABOVE, WE PROPSED NEW SECTION - 4A:

Section - (4A) – Power of the Central Government or Authority (DGT) to manage Radio Frequency Spectrum

(1) Save as otherwise provided in this act, no person shall use any radio frequency spectrum or own or operate any telecom network using any radio frequency spectrum.

(2) provided that the central government may exempt any frequency band from licensing under sch conditions as may be prescribed, through publication in the gazette of India

(3) The Central Government may, grant any spectrum rights, licenses, authorizations, permits to any person or class of persons, or to all citizens by individual licenses or class licenses unconditionally or subject to such conditions, as the Central Government may impose and specify in the grant of the spectrum right, including conditions on the sharing and trading of radio frequency spectrum; and

Provided that the Central Government may exempt any frequency or frequency band (s) from Licensing requirements unconditionally or subject to such conditions as the Central Government may impose

(4) A spectrum right under subsection (3) may be granted to any person or class of persons, or to a particular person.

(5) For the purposes of subsection (3), the Central Government may, subject to the regulations specify, in such form and manner as the Central Government thinks fit:

(a) the procedure and requirements for the grant of a spectrum right under subsection (3);

(b) the conditions for participating in the process for the allocation of the spectrum right; and

(c) the fees and charges payable, or the manner of determining the fees and charges payable, for the grant of the spectrum right.

(6) the Central Government may employ any, or any combination, of the following methods to determine the grant of a spectrum right:

(a) auction

(b) tender

(c) e-auction

(d) Administrative allotment

(e) beauty contest

(f) any other method as prescribed by the authority

(7) The grant of a spectrum right to a person under subsection (3) may be subject to the person paying to the Central Government such fees or charges as may be specified, or as may be determined in the manner specified, by the Central Government.

(8) A person who is granted a spectrum right under subsection (3) must also pay to the Central Government such other fees or charges for the grant, or such periodic fees or charges for the duration of the grant, or both, as may be specified, or as may be determined in the manner specified, by the Central Government under subsection (6).

(9) The fees or charges payable by a person to the Central Government under subsections (5) and (6) are recoverable by the Central Government from the person as a debt due to the sovereign.

(10) The grant of spectrum rights under subsection (3) is at the discretion of the Central Government.

(11) This section does not prevent the Minister from directing the Authority to grant a spectrum right in any specific case.

(12) Anything done under and in accordance with a spectrum right granted under subsection (1) does not constitute an infringement of the privilege conferred by section 4.

(13) For the purposes of giving effect to this section or any of the regulations, the Authority may give directions to any person who has been granted a spectrum right under subsection (3) concerning the use of the spectrum right.

(13) For the purposes of giving effect to this section, the Authority may by regulations can take following action.

(a) provide for the exclusion of any person from participation, or limiting the person's participation, in the process of allocation of any spectrum right;

(b) without affecting subsection (3)(a), specify the types of conditions that the Authority may impose on the grant of any spectrum right;

(c) provide for the variation of the conditions of the grant of any spectrum right;

(d) provide for the resumption, by agreement or compulsorily, of any spectrum right or part of any spectrum right;

(e) provide for the suspension or cancellation of the grant of any spectrum right or part of any spectrum right and the grounds for suspension or cancellation; and

(f) impose on a person who is granted any spectrum right, for the breach of any of the conditions of that grant or of any direction issued under this section, a financial penalty of an amount not exceeding the higher of the following amounts:

(i) 10% of the annual turnover of that part of the person's business in respect of which the person is granted the spectrum right, as ascertained from the person's latest audited accounts.

Saral Sanchar Portal:

DoT has started a web-based portal for issuing of various types of Licenses and Registration Certificate. It is a unified portal to issue various types of Licenses and Registration Certificates in a digitized manner to ensure transparency, a paperless, secure and hassle-free platform. It covers –

(a) Unified License.
(b) Unified License (VNO)
(c) WPC Licenses (RTR/GMDSS/HAM/NW/Non-NW/Satellite/SACFA etc.)
(d) PM WANI.

IN ADDITION TO THE ABOVE, WE PROPSED NEW SECTION – 4B:

SECTION – 4B: Telecom Services through Satellite:

Department of Telecommunication provides various types of licenses for Satellite Services and more services likely to be added in near future. This must be reflected in the proposed Act.

On 25-08-2014, DoT permitted BSNL for provision and operation of Satellite based services using Gateway to be installed in India. Later various types of licenses were issued in India

1. **VSAT Services through INSAT:** After inception of the Telecom Policy, 1999, DoT issued broad guidelines for issue of License for Commercial CUG VSAT service and Captive CUG VSAT service. The scope of the service is to provide data connectivity between various sites scattered within territorial boundary of India via INSAT Satellite Transponder using Very Small Aperture Terminals (VSATs). However, these sites should form part of a Closed User Group (CUG). VSAT service providers takes dedicated satellite bandwidth through the Department of Space (DoS) and is also liable to pay the satellite bandwidth charge separately.

2. **MSS-R Services through INSAT**: INSAT Mobile Satellite System Reporting Service (INSAT MSS Reporting Service) is a one-way satellite-based messaging service available through INSAT. The basic nature of this service is to provide a reporting channel via satellite to the group of people, who by virtue of their nature of work are operating from remote locations without any telecom facilities and need to send short textual message or short data occasionally to a central station. This service provides one way message reporting (transmit only) facility from anywhere in India.

3. **INMARSAT Services**: - Inmarsat has been mandated to provide Global Maritime Distress and Safety System (GMDSS) services for maritime use. The GMDSS is mandated for ships internationally by the International Maritime Organization (IMO) Safety of Life at Sea Convention (SOLAS). In India, BSNL is providing GMDSS services through INMARSAT. The procedures governing use are contained in the International Telecommunication Union recommendations and in the International Radio Regulations, and carry the force of an International Treaty. On 25-08-2014, DoT

granted a Service License to BSNL for provisioning of INMARSAT/Satellite Phone Service, using gateway installed in India' under "Sui-generis" category.

(4) **GMPCS Service**: - In addition to GMDSS, BSNL also provides GMPCS Services in India using INMARSAT. BSNL has established the gateway and started the Global Mobile Communication by Satellite (GMPCS), a Satellite Phone Service in May 2017.

It is proposed that suitable provisions for satellite services and gate-way earth Stations in the private sector should be added under this new section.

5. **Section (5) - "*Power for Government to take possession of licensed telegraphs and to order interception of messages*"**. Minor corrections mentioned.

Provisions mentioned in the Rule 419 A of Indian Telegraph Rule, 1951 regarding Interception needs to be added.

6. **Section (6) - Power to establish telegraph on land of Railway Company**

This section needs to be deleted as RailTel is laying its Telecom Network along the Railway track.

Section (6A) - Power to notify rates for transmission of messages to Countries outside India

Central Government or DoT does not provide any messaging services to countries outside India and Telecom Tariff is decided by TRAI, so this section may be deleted.

7. **Section (7) - Power to make rules for the conduct of telegraphs**

For conducting the day-to-day telegraph functioning, Central Government / DoT has framed Indian Telegraph Rules, 1951 (537 Rules) and (24) amendments have been issued by DoT till date.

Very similar to the Act, these rules have to be revised, as most of rules are outdated.

Section (7A) - Saving of existing agreements

No changes are required.

Section (7B) - Arbitration of disputes

Following change is suggested.

The award of the arbitrator appointed under sub-section (1) can be challenged by any of the party in the Apex Court only.

8. **Section (8) - Revocation of licenses.**

Following change is suggested.

Central Government or DGT may take decision regarding Revocation of License, based on the recommendations of a Committee constituted for specific purpose involving senior officers of DoT and CEO of the Licensee.

9. **Section (9) – Government not responsible for loss or damage:**

Modified as:

Central Government is not liable in respect of any injury, loss or damage suffered by any person by reason of —

(*a*) any failure to provide or delay in providing any telecommunication services or any equipment associated therewith or service ancillary thereto;

(*b*) any failure, interruption, suspension or restriction of any telecommunication service or service ancillary thereto or delay of, or fault in, any communication by means of telecommunications;

(*c*) any error in, or omission of, any information transmitted through telecommunications; or

(*d*) any loss of secrecy in communication arising from the use of any telecommunication service,

which is due to the act or default of another person, or an accident or some other cause beyond the public telecommunication licensee's control.

New Section already added in the Act by virtue of creation of USOF:

In 2003, Indian Parliament passed Indian Telegraph (Amendment) Act, 2003 for creation of USOF. Following Sections have already been added in the existing Act.

9A –

(1) On and from the commencement of Indian Telegraph Act (Amendment), 2003, there shall deemed to have been established, for the purpose of this act, a fund to called the Universal Services Obligation Fund.

(2) The fund shall be under the control of the Central Government and there shall be credited thereto –

(a) Any sum of money paid under Section – 9B.

(b) Any grants and loan made by the Central Government under Section 9(C).

(3) The balance to the credit of the fund shall not be lapsed at the end of the financial year.

9B - The sum of money received toward Universal Service Obligation under Section - 4 shall be credited to the Consolidated fund of India, and the Central Government may, if Parliament by appropriation made by law in this behalf so provides, credit such proceed to the fund from time to time being utilized exclusively for Universal Service Obligation.

9C - The Central Government may, after due appropriation made by Parliament by law in this behalf, credited by grants and loans such sum money as that Government may consider necessary in the fund.

9D -

(1) The Central Government shall have the power to administer the fund in such manner as may be prescribed by rules made under the act.

(2) The fund shall be utilized exclusively for meeting the Universal Service Obligation.

(3) The Central Government shall be responsible for the coordination and ensuring timely utilization and release of sums in accordance with the criteria as may be prescribed by rules made under this act.

We propose to add a new Section in the Act for creation of Telecom Development Fund.

Section – 9(E) - For the research and development of Indigenous Telecom Equipment and to achieve Zero Import Policy, following section need to be added in the proposed Telecommunication Act.

(1) Initially, Rs 1,000/- (One Thousand Crore) will be diverted from the existing USO Fund, to create Telecom Development Fund.

(2) 10% of the total Universal Services Access Levy (presently 5% of the AGR is paid by all Telecom Service Providers) every year, should be transferred to Telecom Development Fund and to be utilized for the Research and Development of Telecom Equipment in the country.

(3) A committee under of Senior Officers will be constituted under the chairmanship of the Secretary, Telecom and other members will be from R&D organizations, TEMA, IITs and other reputed institutions.

(4) Funds will be allocated based on the recommendations of the Committee.

PART- III

POWER TO PLACE TELECOM LINES, EQUIPMENTCABLES, WIRES, POSTS, MASTs, OR TOWERs

10. Section (10) –

Power for telegraph authority to place and maintain telegraph lines and posts.

Central Government may issue rules for placement of telecom lines, equipment cables, wires, and posts, masts or towers

Department of Telecom vide Gazette Notification dated 15-11-2016, issued Indian Telegraph Right of Way Rules, 2016, to regulate Underground Infrastructure (Optical Fiber Cable) and Over Ground Infrastructure (Microwave Towers).

The Department of Telecommunications (DoT) has launched a centralized right of way (RoW) portal, Sugam Sanchar (translated as accessible connectivity), which will provide single-window clearance for stakeholders to apply and track applications.

11. Section (11) –
    Power to enter on property in order to repair or remove telegraph lines posts
12. Section (12) –
    Power for local authority to give permission under section 10, clause (c), subject to conditions.
    Provisions applicable to property vested in or under the control or management of local authorities.
13. Section (13) –
    Power for local authority to require removal or alteration of telegraph line Telecom Network or post.
14. Section (14) –
    Power to alter position of gas or water pipes or drains.
15. Section (15) –
    Disputes between telegraph authority and local authority.
16. Section (16) -
    Provisions applicable to other property
    Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority
17. Section (17) –
    Removal or alteration of telegraph line or post on property other than that of a local authority.
18. Section (18) –
    Provisions applicable to all property
    Removal of trees interrupting telegraphic communication –
19. Section (19) –
    Telegraph lines and posts placed before passing of this Act
    Section (19A) – Person exercising legal right likely to damage telegraph or interfere with telegraphic communication to give notice.
    Section (19B) –
    Power to confer upon licensee powers of telegraph authority under this Part.

Right of Way:

On 15-11-2016, DoT issued detailed rules regarding Right of Way knows as Indian Telegraph Right of Way Rules, 2016.

The Department of Telecommunications further launched a GatiShakti Sanchar portal, which would streamline the application and approval procedure for right of way (RoW) across the country. Any Telecom Licensee/ IP-1 Infrastructure company used the same for filing the requisition and getting approval.

Many Central Government Departments and State Governments are the stake holders.

In view of this new provision as per DoT order dated 15-11-2016 should be inserted.

PART- IV

Penalties

20. Section (20) –
Establishing, maintaining or working un-authorized telegraph–

Penalty Amount mentioned needs to be revised

Section (20A) –
Breach of condition of license

Penalty Amount mentioned needs to be revised.

21. Section (21) –
Using unauthorized telegraphs

Penalty Amount mentioned needs to be revised

22. Section (22) -
Opposing establishment of telegraphs on railway land.

Section needs to deleted.

23. Section (23) –
Intrusion in to signal-room, trespass in telegraph office or obstruction.

Minor corrections suggested.

24. Section (24) –
Unlawfully attempting to learning the contents of messages.

No change is required.

25. Section (25) -
Intentionally damaging or tampering with telegraphs.

Minor corrections suggested.

Section (25A) –
Injury to or interference with a telegraph line or post

Minor corrections suggested. Penalty Amount mentioned needs to be revised.

26. Section (26) –
Telegraph officer or other official making a way with or altering, or unlawfully intercepting or disclosing, messages, or divulging purport of signals.

No change is required.

27. Section (27) -
Telegraph officer fraudulently sending messages without payment.

May be deleted.

28. Section (28) –
Misconduct

No change is required.

29. Section (29) –
Sending fabricated messages.

No comments – section replaced by 29A.
Section (29A) –
Penalty

Amount of penalty needs revision.

30. Section (30) -
Retaining a message delivered by mistake

May be deleted.

31. Section (31) –
Bribery

No comments.

32. Section (32) -
Attempts to commit offences

No comments.

PART-V

SUPPLEMENTAL PROVISIONS

33 and 34. Section (33 & 34)-

Power to employ additional police in places where mischief to telegraphs is repeatedly committed.

These laws might be used by British to harass general public.

Both the sections need to be deleted, as does not match with Indian Constitution.

Suggestion from ITU-APT for addition of New Sections in the Proposed Telecom Act.

A. Powers for Modification of license conditions by DGT

(1) Subject to this section, the Authority (DGT) may modify the conditions of a license granted under this section.

(2) Before making modifications to the conditions of a license of a public telecommunication licensee under this section, the Authority must give notice to the licensee —

(*a*) stating that it proposes to make the modifications in the manner as specified in the notice and the compensation payable for any damage caused by the modifications; and (*b*) specifying the time (being at least 28 days from the date of service of notice on the licensee) within which written representations with respect to the proposed modifications may be made.

Authority must take the views of the TRAI on the proposed modifications.

(3) Upon receipt of any written representation mentioned in subsection (2), the Authority must consider the representation and may —

(*a*) reject the representation; or

(*b*) amend the proposed modifications or compensation payable in accordance with the representation, or otherwise,

and, in either event, the Authority must issue a written direction to the licensee requiring that effect be given to the proposed modifications specified in the notice or to such modifications as subsequently amended by the Authority within a reasonable time.

(4) The Authority must not enforce its direction —

(*a*) during the period of any appeal pending with the Minister of Communication.

(*b*) while a reconsideration request of the public telecommunication licensee for pending appeal for a decision of the Authority under this section is under consideration by the Authority; or

(*c*) while an appeal of the public telecommunication licensee in respect of a decision of the Authority under this section is under consideration by the Minister.

D. In place of Section (8 and 20A) – regarding

Revocation of License, following is suggested,

Suspension or cancellation of license, etc.

If the Authority is satisfied that a person who is granted a license under section 4 or any regulations made under this Act is contravening, or has contravened, whether by act or omission —

(*a*) any of the conditions of the license or part thereof;

(*b*) any provision of any code of practice or standard of performance;

(*c*) any direction of the Authority given under various sections.

(*d*) any terms or conditions of participation in a dispute resolution scheme

the Authority may, by written notice, do either or both of the following:

(*e*) issue such written order to the person as the Authority considers requisite for the purpose of securing compliance thereof;

(*f*) require the person to pay, within a specified period, a financial penalty of an amount not exceeding the higher of the following amounts:

(i) 10% of the annual turnover of that part of the person's business in respect of which the person is granted the license, as ascertained from the person's latest audited accounts;

(2) If the Authority is satisfied that —

(*a*) the person mentioned in subsection (1) is again likely to contravene, whether by act or omission, any condition, provision, direction or section mentioned in that subsection;

(*b*) the person mentioned in subsection (1) has gone into liquidation other than for the purpose of amalgamation or reconstruction;

(*c*) the person mentioned in subsection (1) is no longer in a position to comply with this Act or the terms or conditions of the person's license; or

(*d*) the public interest so requires,

the Authority may by written notice and without payment of any compensation or refund of any fee, do all or any of the following:

(*e*) cancel the license or part thereof;

(*f*) suspend the license or part thereof for such period as the Authority thinks fit;

(*g*) reduce the period for which the license is to be in force.

(3) An order under subsection —

(*a*) may require the person concerned (according to the circumstances of the case) to do, or to refrain from doing, such things as are specified in the order, or as are of a description specified in the order; and

(*b*) takes effect at such time (being the earliest practicable time) as is determined by or under that order.

(4) The Authority may at any time vary, suspend or revoke the whole or any part of an order.

(5) Any person who fails to comply with any order shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 10% of the Annual Turn Over or to imprisonment for a term not exceeding 3 years or to both.

(6) In any proceedings brought against any person for an offence, it is a defense for the person to prove that the person took all reasonable steps and exercised all due diligence to avoid contravening the order.

(7) If the Authority, by written notice under, requires a person who is granted a license to pay, within a specified period, a financial penalty and the person fails or refuses to pay the financial penalty within the specified period, the Authority may, by written notice and without payment of any compensation or refund of any fee, do all or any of the following:

- (*a*) cancel the license or part thereof;
- (*b*) suspend the license or part thereof for such period as the Authority thinks fit;
- (*c*) reduce the period for which the license is to be in force.

(8) Any financial penalty payable by any person is recoverable by the Authority as a debt due to the Authority from that person; and the person's liability to pay is not affected by the person's license ceasing (for any reason) to be in force.

E. Equipment Type Approval(ETA)to be used in Telecom Network–

Regarding Approval of Equipment to be used in Telecom Network.

DoT on 05-09-2017, issued notification regarding Testing and Certification of Telegraph. In addition to the above, from 15th June 2021 the Telecom Service Providers (TSPs) are mandatorily required to connecting their networks only those new devices which are designated as 'Trusted Products' from 'Trusted Sources'.

(1) The following equipment must be approved by the Authority before use

- (*a*) any equipment to be used for connection (whether directly or indirectly) to any telecommunication system;
- (*b*) any equipment to be used as an adjunct to or in conjunction with any telecommunication system; and
- (*c*) any equipment belonging to a telecommunication system licensee.

(2) A person applying for an approval under this section may be required by the Authority to comply with such requirements as the Authority may think appropriate;

and those requirements may include a requirement to satisfy some other person with respect to any matter.

(3) An approval under this section may apply either to particular equipment or to any equipment of a description specified in the approval, and may so apply either for the purposes of a particular telecommunication system or for the purposes of any telecommunication system of a description so specified.

(4) An approval under this section may specify conditions which must be complied with if the approval is to apply, for any purposes specified in the approval, to any telecommunication system or equipment which is so specified or is of a description so specified.

(5) Any such condition referred to in subsection (4) may impose on the person to whom the approval is given a requirement from time to time to satisfy some other person with respect to any matter.

(6) The Authority or any other person by whom any matter falls to be determined for the purposes of any requirement imposed pursuant to subsection (2) or (4) may charge a fee in respect of the carrying out of any test or other assessment made by the Authority or other person.

(7) A public telecommunication licensee may, with the approval of the Authority (except in cases of emergency),.cease or refuse to supply a telecommunication service to any person by means of a telecommunication system operated by the licensee if, through the use of such telecommunication service, there is or is intended to be connected to the telecommunication system, equipment or cabling that is a threat to —

(*a*) the safety or proper functioning of the telecommunication system; or

(*b*) the safety of any person.

F. Framework for Mergers & Acquisitions etc.

As mentioned in the consultation paper released by DoT – "With a view to simplifying the framework for mergers, demergers and acquisitions, or other forms of restructuring, a new law needs to allow for any licensee or registered entity to comply with the scheme for restructuring as provided under the Companies Act, 2013, and **simply inform the Department of Telecommunications**, as required. This process needs to be simplified".

Comments:

It will not be appropriate that merger/de-merger should be as per Company Act, 2013 and companies should simply inform the DoT, because-

a. The merger and acquisition in the telecom sector are considered to be horizontal mergers, so both the companies should be in same line of business.
b. It is necessary to check, whether monopoly may develop after merger. DoT on 20-02-2014 already issued limit of 50% of market share.
c. Regarding FDI in Telecom Sector, guidelines are issued by SEBI also needs to be verified.
d. Some guidelines are also issued by Competition Commission of India for Telecom Sector.
e. DoT on 20-02-2014 issued a detailed guidelines regarding merger of various categories of Telecommunication Licensees.

So, it will be appropriate that DoT should take opinion from SEBI and CCI.

G. Recognition of Net Neutrality:

A separate section needs to added to ensure that the regulatory framework on Net Neutrality adheres to the fundamental principles and concepts of Net Neutrality. DoT has already issued details on 31st July, 2018.

H. TRAI has issued regulation regarding Telecom Consumers Protection and Redressal of Grievances Regulations, 2007, as powers under TRAI Act.

TRAI on 05-01-2012 issued detailed guidelines for Telecom Consumers Complaint Redressal Regulations, 2012, as Quality of Service in monitored by the TRAI.

I. On 27-06-2022, DoT has issued guidelines for Captive Non-Public Network (CNPN) License.

It allows Enterprises for setting up Private Captive Isolated Network, by acquiring License from DoT and same is valid for ten years. Some enterprises are willing to gain 5G Spectrum for setting-up Private Captive Network.

J. Infrastructure Service Providers (IP-1) (Passive Telecom Network)

DoT on 04-07-2017, issued Policy regarding IP-1 registration. IP-1 license is an authorization issued by the Department of Telecommunication (DoT), to enter in the telecom businesses, to work as a Telecom Infrastructure Provider of Category-I. With this license, an IP company can provide technical aid like Dark Fiber, Right of Way, Tower, and Duct Space.

K. Powers of Director General Telecom:

Following Exclusive privilege to DGT with respect to Telecommunications are suggested.

(a) As from (date of operation of new act) and subject to this Act, the Telecom Authority (DGT) has the exclusive privilege for the operation and provision of various types of telecommunication systems and services in India.

The privilege conferred on the Authority (DGT) by subsection (a): --

(i) includes the rights of establishing, installing, using, working, maintaining, developing, constructing, promoting, hiring and selling telecommunication systems and services; and
(ii) extends to every vessel or aircraft registered in India and every other vessel, aircraft and any vehicle, whether mechanically propelled or not, in India.

(b) The privilege conferred by section (a) is not infringed by: -

(i) the running by a person solely for the person's own use or solely for the purposes of the person's business (but not for providing any telecommunication service to another person) of a telecommunication line system in which all the equipment comprised therein is situated.
(ii) the operation of any telecommunication system in the course of their duties by the officers and men and women of the Indian Armed Forces, the Indian Police Forces, the Indian Civil Defense Forces or of any visiting force lawfully present in India.

L. Reconsideration by Telecom Authority (DGT) and appeal to Minister:

To avoid litigations between Licensor and Licensee, we propose to add new section.

(1) Any telecommunication licensee aggrieved by —

(*a*) any decision of the Authority in the exercise of any discretion vested in it by or under this Act; or

(*b*) anything contained in any code of practice or standard of performance or in any direction of the Authority given under various sections,

may, within 30 days of the receipt of the decision or direction of the Authority or the issue or approval of the code of practice or standard of performance, as the case may be —

(*c*) make a request to the Authority to reconsider the matter; or

(*d*) appeal to the Minister.

(2) Any person (other than a telecommunication licensee) who is aggrieved by —

(*a*) any decision of the Authority under various sections
or

(*b*) anything contained in any code of practice issued under various sections or in any direction of the Authority, may, within 30 days after the receipt of the decision or direction of the Authority or the issue of the code of practice, as the case may be —

(*c*) make a request to the Authority to reconsider the matter; or

(*d*) appeal to the Minister.

(3) A person must not make both a reconsideration request to the Authority and an appeal to the Minister in respect of the same decision or direction of the Authority or thing contained in a code of practice or standard of performance.

(4) Where a reconsideration request and an appeal have been made in contravention to existing provisions, the appeal is deemed to be withdrawn.

(5) Where -

(*a*) a reconsideration request has been made to the Authority by any person; and

(*b*) an appeal in respect of the same decision or direction of the Authority or thing contained in a code of practice or standard of performance is made or has been made to the Minister by any other person,

the appeal to the Minister is deemed to be withdrawn.

(6) The Authority may determine any reconsideration request under this section by confirming, varying or reversing any decision or direction or by amending any code of practice or standard of performance.

(7) Any telecommunication licensee or any person mentioned (as the case may be) who is aggrieved by any decision of the Authority under subsection (6) may appeal to the Minister within 30 days after the receipt of the decision.

(8) Any person who makes an appeal to the Minister within the period specified in that subsection —

(*a*) state as concisely as possible the circumstances under which the appeal arises, and the issues and grounds for the appeal; and

(*b*) submit to the Minister all relevant facts, evidence and arguments for or against the appeal, as the case may be.

(9) The Minister may reject any appeal of an appellant who fails to comply.

(10) Where an appeal has been made to the Minister, the Minister may require any person to whom applies to provide the Minister with all such information as

the Minister may require for the purpose of considering the appeal and making a determination for resolving it.

(11) Subsection (10) applies to -

(*a*) any party to the appeal; and

(*b*) any person who is not a party to the appeal but appears to the Minister to have information that is relevant to the matters mentioned in that subsection.

(12) Any person required to provide information under subsection (10) must provide it in such manner and within such period as may be specified by the Minister.

(13) The Minister may determine an appeal under this section by confirming, varying or reversing any decision or direction of the Authority or by amending any code of practice or standard of performance.

(14) Any decision of the Minister under subsection (13) is final.

(15) Unless otherwise provided, where a reconsideration request or an appeal is made under this section, the decision, direction or other matter which requires reconsideration by the Authority or which is appealed against must be complied with until the determination of the reconsideration request or the appeal, as the case may be.

(16) The Minister may make regulations in respect of the manner in which an appeal may be made to the Minister under subsection (1), (2) or (7) and the procedure to be adopted in hearing such appeals.

M. OTT Players to Remain Outside Purview of DoT Licensing:

More than 40 OTT Platforms are in operation in India and more likely to added in near future. Presently, OTT players are governed by the IT act and no license / permission regime is applicable to OTT players.

OTT services are governed by the IT act and therefore they should remain outside the purview of the telecom Act

N. Prime Minister's Wi-Fi Access Network Interface (PM-WANI):

The Union Cabinet on 9th December, 2020 has approved setting up of Public Wi-Fi Networks by Public Data Office Aggregators (PDOAs) to provide public Wi-Fi service through Public Data Offices (PDOs) spread across length and breadth of the country to accelerate proliferation of Broadband Internet services through Public Wi-Fi network in the country. This will encourage technology entrepreneurs to develop and deploy Wi-Fi technology solutions triggering Make in India. This will enable new business models for shopkeepers as potential PDOs to provide high speed broadband services. No License Fee for providing broadband internet services using public Wi-Fi Hotspots will be charged. This step will massively encourage internet proliferation and penetration across the length and breadth of the country. Availability and use of Broadband will enhance incomes, employment, quality of life, ease of doing business etc.

So, a new Section in the proposed Act for PDOs should be added.

O. Guidelines for the registration requirement for OSPs:

DoT in recent year has changed the guidelines for OSPs for ease of doing business by BPOs.

On 23-06-2021, DoT issued detailed guidelines for OSPs and need to be added in the proposed Act.

So, a new Section in the proposed Act for OSPs.

P. Mobile Number Portability (MNP): -

DoT on 06th of May, 2009 issued detailed guidelines for Intra LSA Mobile Number Portability and later on 03-011-2014 issued directions for Full Mobility (Inter/Intra LSA).

Portability of Mobile Number is very important for consumers to get best quality of service, as right of the mobile user. It compelled the Service Provider to provide good Quality of Service. Almost 700 million customers have already availed the facility.

So, a new Section in the proposed Act for MNP.

Q. CLI Spoofing regarding International Long-Distance Service:

DoT on 06-07-2022 issued direction to all ILD service providers to drop all calls

With no CLI or improper CLI at their Gateway itself, in order to ensure Public Safety and Security of the Country

Considering the safety and security, there should be a Section in the proposed Act.

R. Public Mobile Radio Trunking Service (PMRTS): (Handheld Walky-Talky)

Service started in 1995 - A very useful service for Manufacturing Units, Oil & Gas, Mining, Construction, Courier, Emergency Medical Services, Utilities, Transportation (Road, Airports, Harbors), Energy & Communication, Fire & Safety department of public utilities.

PMRTS is a two-way mobile radio service in which users communicate amongst themselves in a designated group, talk through a pair of radio frequencies which get assigned out of a common pool of frequencies in a designated frequency band. PMRTS is a well proven service having its unique capability of communication instantly within the closed user group (CUG).

A separate section to be added considering the usefulness of the service.

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Comments on the Department of Telecommunications Consultation Paper on 'Need for a new legal framework governing Telecommunication in India'

The Department of Telecommunications ('DoT'), Government of India has floated a Consultation Paper on the 'Need for a new legal framework governing Telecommunications in India' on July 23, 2022.[1]

The proliferation of Telecommunication services has been on an upward rise over the past decade. The Covid-19 pandemic further highlighted the crucial role played by the telecom sector in facilitating transactions, remote work, and access to medical services, throughout urban and rural areas of the country. The legal framework governing the Telecommunication sector requires a significant overhaul, as the existing framework is outdated. The present colonial-era laws governing Telecommunication practice in India can be found mainly under the Indian Telegraph Act, 1885, Indian Wireless Telegraphy Act, 1933, and the Telegraph Wires (Unlawful Possession) Act, 1950.

Over the past few decades, technological development has come at an extremely rapid pace. According to the data released by TRAI, the total number of active wireless subscribers in India stands at around 101.3 Crore users.[2] The total number of telephone subscribers in India increased from 116.693 Crore from March, 2022 to 116.782 Crores at the end of April, 2022, showing a monthly growth rate of 0.08%.[3] As noted in the Consultation Paper itself, India is the second largest telecom market worldwide.

It is, therefore, not surprising that stakeholders have been demanding that the legal framework governing telecommunication practice must also keep pace. The DoT wants a transformation of the

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[1] Department of Telecommunications, Government of India, Consultation Paper on 'Need for a new legal framework governing Telecommunication in India'. Available here: https://dot.gov.in/sites/default/files/Consultation%20Paper%20final%2023072022-1.pdf?download=1.

[2] Telecom Regulatory Authority of India, Press Release No.40/2022, 16th June, 2022, New Delhi.

[3] *Ibid.*

Telegraphy laws which would have the potential to unleash India's true economic power, and help achieve the notion of an "*Aatma Nirbhar Bharat*".

In particular, the following aspects of the Consultation paper deserve a deeper analyses as their implementation under the new law would have significance for all the stakeholders:

- *Establishing a Right of Way under the new legal framework*:

The Consultation paper further lays the groundwork for building upon the Indian Telegraph Right of Way (Amendment) Rules, 2021 which was notified by the Government in October, 2021. The inclusion of certain provisions, such as nominal one-time compensation of Rs.1,000/- per km for fixing overground telegraph line. Such measures will allow for more streamlined regulation by amending the Indian Telegraph Right of Way Rules, 2016. The Amendment Rules further introduce documentation process for overground telegraph lines, from the erstwhile rules which regulated only underground Optical Fibre Cable, and mobile towers.

The DoT is correct in observing that the new law must provide a robust regulatory framework for Right of Way in a uniform and non-discriminatory manner, as the same will ensure that the rural and urban parts of the country will have equal opportunity and availability. Such measures are welcome provisions given by the DoT as – if implemented in letter and spirit – will allow for smoother functioning in the telecommunications sector.

- *Effect of restructuring, mergers & acquisitions of various players in the telecom value chain and associated effects on competition law*:

The number of mergers, acquisitions and restructuring taking place in the telecommunications sector have been increasing over the past few years. The Consultation paper has rightly observed that a new law needs to allow for greater simplification of the process for complying with the provisions of the Companies Act, 2013. Over the past few years, the growth of companies, start-ups and ventures has been possible owing to liberalized policies of the government.

Recommendation:

The effect of enormous mergers and acquisitions, such as that of Vodafone India and Idea in 2018, would also impact consumers. India has seen a massive growth in its telecom consumer base; the total telephone subscribers in India stands at 117.296 Crores.[4] It is imperative that the new law which is enacted by the DoT places special emphasis on the effects of such mergers on competition practices and consumers alike. This should be in alignment with the Competition Act, 2002 and place special emphasis on the interest of the users.

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[4] Press Release No. 53/2022, Telecom Regulatory Authority of India, New Delhi, 17th August, 2022. Available at: https://www.trai.gov.in/sites/default/files/PR_No.53of2022_0.pdf.

- *Overhauling the current Universal Service Obligation Fund (USOF)*

One of the key goals of the New Telecom Policy of 1999 was "Universal Service." The goal was to achieve a balance between providing high-level services that could meet the needs of the national economy and providing Universal Service to all untapped areas, including rural ones. The Universal Access Levy (UAL), at a predetermined percentage of the revenue received by the telecom licensees to be determined in cooperation with the Telecom Regulatory Authority of India (TRAI), was to be used to raise funds for meeting the Universal Service Obligation (USO).

The Indian Telegraph (Amendment) Act, 2003 gave a statutory status to USOF. Part IIA was inserted in the principal Act. Section 9A(1) deals with the establishment of the Universal Service Obligation Fund (USOF). The rules for administration of the Fund known as Indian Telegraph (Amendment) Rules, 2004 were notified on 26.03.2004. The stated vision behind establishing this fund was to enable rural Indians to achieve their fullest potential and participate productively in the development of the nation by virtue of being effectively connected through a reliable and ubiquitous telecommunications network, access to which was within their means.

Firstly, it has been observed that the USOF is under utilized and 50 percent of the funds were not disbursed till 2021. The funds have not been spent consistently over the years and this results in the aims that the fund sought to achieve not being reached.[5]

Efforts must be made to build upon and strengthen existing programmes, with emphasis on- .

i. **Women and other gender minorities:** The Sanchar Shakti project must be expanded across India and there must concerted efforts to increase access to Information and Communication Technology (ICT) services to women and gender minorities.

ii. **Persons with Disabilities:** India has taken significant steps to increase access to persons with disabilities, however, lack of awareness and enforcement remains a major issue which has repeatedly been raised. There is an urgent need to have strong enforcement mechanisms in place with an increased focus on creating awareness. Additionally, policies must be made with respect to hardware as well as software. Devices must be designed to make them more accessible and compatible. Further, attention must be paid to methods for identification of

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[5] Pavithra K M, *Data: After 20 years of its introduction, about 50 percent of the USOF remains unutilized*, August 16, 2021. Accessed at: https://factly.in/data-after-20-years-of-its-introduction-about-50-of-the-usof-remains-unutilized/.

devices which are disabled friendly.[6]

Recommendation:

Measures must be taken to enhance and streamline efforts increase access to stable ICT services in schools, especially in rural and remote areas. The corpus of the USOF should be spent for research and development in this area to promote innovation. It is necessary that the DoT enables linking of the USOF to the Telecommunication Development Fund in order to address larger public issues relating to the delivery of universal telecommunication service to underserved rural and urban areas.

- *Establishing Standards for Public Safety and National Security*

The Consultation paper states that the new law will also include provisions for addressing situations of public emergency, public safety and for taking measures in the interests of national security.[7]

At present, the law regulating telecommunication services in situations of public safety and national security can be found under the Indian Telegraph Act, 1885. Section 5 of the Act lays down provisions relating to the power of the Government to take possession of licensed telegraphs and to order interception of messages, on the occurrence of any public emergency, or in the interest of the public safety.

Section 5 enables the Central Government and the State Government to issue interception orders and orders related to suspension of telecommunication and internet services. However, the terms 'public safety' and 'public emergency' have not been defined in the Indian Telegraph Act, 1885. 'Public safety' and 'public emergency' have been defined by the Supreme Court in the context of interception under the Indian Telegraph Act, 1885 in the case of ***Civil Liberties (PUCL) v. Union of India,*** (1997) 1 SCC 301. The Court observed that:

> *"Public emergency would mean the prevailing of a sudden condition or state of affairs affecting the people at large calling for immediate action. The expression "public safety" means the state or condition of freedom from danger or risk for the people at large....Neither the occurrence of public emergency nor the*

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6 *Access to telecommunication/ICT services by persons with disabilities and other persons with specific needs: Output Report on ITU-D Question 7/1 for the study period 2018-2021*. Geneva: International Telecommunication Union, 2021. Licence: CC BY-NC-SA 3.0 IGO. Accessed at: https://www.unapcict.org/sites/default/files/2021-09/Access%20to%20ICT%20for%20PwD.pdf

7 Para 26, *n.1.*

> *interest of public safety are secretive conditions or situations. Either of the situations would be apparent to a reasonable person."*[8]

The Supreme Court further interpreted the application of section 5(2) while observing that:

> *"Occurrence of any public emergency" or "in the interest of public safety" are the sine qua non for the application of the provisions of Section 5(2) of the Act. Unless a public emergency has occurred or the interest of public safety demands, the authorities have no jurisdiction to exercise the powers under the said section....When either of these two conditions are not in existence, the Central Government or a State_Government or the authorised officer cannot resort to telephone-tapping even though there is satisfaction that it is necessary or expedient so to do in the interests of sovereignty and integrity of India etc."*[9]

Further, in the case of ***Romesh Thappar v. State of Madras*** 1950 SCR 594, the Supreme Court interpreted public safety to mean - security of public or their freedom from danger.[10] Again, in the case of *Ram Manohar Lohia v. State of Bihar* (1966) 1 SCR 709, it was observed that **law and order, public order and security** of the state are three concentric circles. Where, law and order is the outer most circle, public order is the middle circle and security of the state is the inner most circle.[11] After the *Anuradha Bhasin v. Union of India*[12] judgment of the Supreme Court, it must be borne in mind that access to internet (a part of telecommunication services) has been declared a fundamental right, to the extent that it is a medium to exercise the Fundamental Rights to freedom of speech & expression and the freedom of trade, guaranteed under Articles 19(1)(a) and 19(1)(g), respectively.

Recommendation:

In light of the above, any restrictions imposed on the access to telecommunications and internet must withstand the tests laid down under Article 19(2). Accordingly, the meaning which is to be attached to "public safety" must be within the ambit of exhaustive list of restrictions laid down in Article 19(2) as interpreted by the Supreme Court in the above-mentioned cases.

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[8] *People's Union For Civil Liberties v. Union of India*, (1997) 1 SCC 301, para 27.

[9] *Ibid*, at para 28.

[10] *Romesh Thappar v. State of Madras*, 1950 SCR 594, para 6.

[11] *Dr. Ram Manohar Lohia v. State of Bihar and Ors*, para 55.

[12] *Anuradha Bhasin v. Union of India*, (2020) 3 637.

The proposed law should also ensure that procedure for surveillance is well-defined and in tune with the principles of necessity and proportionality. There should be judicial and parliamentary oversight over the surveillance regime.

Concluding Remarks:

Exponential growth of telecommunication services and increased reliance on these services by both the urban and rural sections of the country have made them essential for the growth of the country. The Covid-19 pandemic notwithstanding, Telecommunication services are absolutely critical for economic growth but have also become necessary for achieving Sustainable Developmental Goals (SDGs) such as education, healthcare, connectivity, amongst other things. Increasing access to ICT services is a SDG and is considered to be a tacit part of achieving other SDGs.

Right to Privacy is a fundamental right of the citizens on India as held by the Constitutional bench of the Supreme Court in *Justice KS Puttaswamy v Union of India (Privacy-9J.)*. Any surveillance regime should be in compliance with the principles of necessity and proportionality with proper judicial and parliamentary oversight.

The Government of India must be lauded for floating the Consultation Paper and allowing stakeholders to provide comments. The Telecommunication sector is one of India's most prized sectors from both - an economic and societal context, and hence, the Department of Telecommunications has a huge role in ensuring ***universal, resilient, secure and accessible*** telecommunication services are available for each citizen – whether in rural or urban India. We can then achieve the much sought-after goal of **Aatma Nirbhar Bharat.**

About SFLC.in:

SFLC.in is a New Delhi-based not-for-profit organization that brings together lawyers, policy analysts, technologists, and students to protect freedom in the digital world. We promote innovation and open access to knowledge by helping developers make great Free and Open Source Software (FOSS), protect digital civil liberties by providing pro-bono legal advice, and help policymakers make informed and just decisions with the use and adoption of technology.

We hope that our submission proves to be useful. Please feel free to contact us for any clarification or information. [13]

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[13] SFLC.in website is available here: https://sflc.in/.

UL Solutions' Inputs on Consultation Paper on Need for a new legal framework governing Telecommunication in India

The telecom sector has witnessed significant technological changes in the recent decades which not only has impacted the services and operations of the telecom services but also has brought significant positive changes on the society and the users. The penetration of telecom services across the country as well as the wide adoption of advanced technologies and devices clearly depicts the success story of the telecom revolution in India. It is utmost important and need of the time that the legal and regulatory framework of the telecom sector should also be aligned to keep pace with all emerging as well as future technologies, safety, and security of users as well as continuously evolving telecommunications ecosystem.

As an organization with expertise in testing and certification of products & services across multiple industry segments, we would like to submit our following inputs pertaining to the section "*Standards, Public safety and national security*" of the consultation paper.

(a) **Standards:** As the Government has a key focus on the manufacturing of telecom products in the country as well as considering the globalization of technologies and user devices, adoption of globally accepted standards is very much critical to boost the telecom sector as well as the related devices ecosystem. It is utmost important that the technical specifications, standards requirements etc. for telecom equipment manufactured in India as well as exported from across the globe should be in line with the globally accepted standards (i.e., for safety, security and performance aspects etc.). It is pertinent to mention that as telecom services including the digital connectivity services are having a presence across multiple industry segments (using IoT, M2M etc.), the adoption of globally accepted standards will ensure timely and streamlined penetration of services, development of digital infrastructure and adoption of new technology and devices. Further, the adoption of globally accepted standards will also facilitate ease of doing business for manufacturers and facilitate them to manufacture products which are globally compatible and acceptable.

(b) **Conformity Assessment of Telcom Sector:** Considering the wide adoption of telecom/digital technology and devices as well as usage of same in critical applications like financial transactions, network security etc., it is important that a robust conformity assessment framework around the telecom network and devices need to be ensured on priority basis. Under such framework the telecom network elements as well as devices can be tested and certified in conformance to globally accepted standards, processes, and requirements to ensure the safety, security and desired performance of the devices and overall telecom ecosystem. Telecommunication Engineering Centre (TEC) has already developed a comprehensive and robust conformity assessment procedure for telecom sector as "Mandatory Testing & Certification of Telecommunication Equipment (MTCTE)" under which the telecom products can be tested and certified as per the globally accepted standards for various technical parameters like EMI/EMC, safety, radio interface, IPv6 etc. In addition, National Centre for Communications Security (NCCS) has also done a commendable work towards developing Indian Telecom Security Assurance Requirements (ITSAR) for various telecom products to ascertain the security of the respective products.

It is our humble submission that consideration be given to development of a robust Standards & conformity assessment framework under new legal framework for all telecom network elements and devices which can facilitate a safe, secure, and trusted telecom ecosystem to the users as well as other concerned stakeholders in telecom sector.

SATELIOT
Space · Connecting · 5G IoT

Shri Naveen Kumar
Director (Restg.)
Joint Secretary - Telecom
Department of Telecommunications
Ministry of Communications
naveen.kumar71@gov.in

02 September 2022

Subject: **Consultation Paper on 'Need for a new legal framework governing Telecommunication in India'**

Dear Shri Kumar:

On behalf of Sateliot, the pioneering global satellite operator to offer Internet-of-Things (IoT) connectivity over standard 5G NB-IoT, I am pleased to express our support to the Department of Telecommunication's (DoT) efforts to update the telecommunications framework of India. Considering how technological innovations in telecoms have accelerated in the past couple of years, this is certainly a welcome development, as it acts as a signal to the market that India is ready to embrace these changes.

Please find below our comments to the consultation paper on 'Need for a new legal framework governing Telecommunication in India', for the kind consideration of your office:

Simplifying and modernizing the Indian telecoms framework

Sateliot believes that updating the existing Indian regulatory framework for telecoms would be beneficial for the country. Currently, majority of Indian telecom laws are rooted in decades-old legislation that may no longer serve the needs of the market. These existing regulatory tools and principles may no longer be appropriate to address the new challenges posed by the advent of modern technological innovations. New developments in telecommunications, which include 5G, satellite technology, and IoT connectivity, may not necessarily fit within the mould of the currently subsisting framework, which could cause confusion and instability in the regulatory environment for these business models.

In addition, the existing rules are found in a variety of statutory instruments, which are often managed and implemented by different government bodies. These may make it more cumbersome for businesses to comply with, thereby leading to high compliance costs and even regulatory risks. These issues may deter the private sector from expanding their businesses further, and even prevent them from making an investment at all. As such, simplifying the rules would not just east the compliance burdens of firms, but could also help in facilitating the ease of doing business in the country. This also resonates well with the goal of the consultation to improve the comprehensibility of the law for the benefit of citizens.

Licensing procedures for satellite IoT connectivity

Currently, India is one of the few jurisdictions in the world which developed a new subset of regulations to cover IoT connectivity or Machine-to-Machine communications (M2M). To this end, the DoT has included IoT and M2M services within the ambit of its Unified License (UL) regime, which aims to simplify the telecoms licensing procedure in India. The Department should certainly be commended for this regulatory change, as it will allow more IoT firms to deliver their services to the booming Indian market.

Nonetheless, certain rules need to be clarified and simplified regarding this type of licensing regime. IoT and M2M services could be delivered in a variety of ways. Apart from delivering such service through terrestrial networks, a new innovative way of providing IoT connectivity is through the use of satellites. This is shaping to be a good alternative to traditional communication tools, as satellite can provide improved coverage, especially in unserved and underserved areas where mobile networks fail to capture. This is what Sateliot has been doing, as it leverages on the potential of satellite communications to provide seamless IoT connectivity globally.

SATELIO IOT SERVICES, S.L. Registro Mercantil de Barcelona en el tomo 46.716, folio 222, Hoja 528.630 CIF B67334193

There is no doubt that Satellite IoT is a relatively recent technological trend and innovation is progressing much quicker than the regulatory frameworks. Consequently, we have found that existing satellite service frameworks are applied by regulators, typically GMPCS and Broadband, to try and accommodate Satellite IoT under the same umbrella. While pragmatic, we have found this approach is not always fit for purpose, as the existing frameworks are not always clear or well aligned to the Satellite IoT context. For instance, Broadband Service Licences can carry conditions and fee levels that are irrelevant, disproportionate and/or preclusive to Satellite IoT entrants. Depending on the circumstances, a more appropriate and tailored authorisation framework may be needed to accommodate the Satellite NB-IoT context, as distinct from the existing categories - Broadband and GMPCS. This is key to fostering the development and introduction of NB-IoT-specific technologies to India and avoid deterring innovation by applying existing models in a 'one-size-fits-all' manner.

Other than having very low spectrum and power demands compared to Broadband and GMPCS terminals, NB-IoT devices are specifically designed to be very compact, low cost and widely deployable compared to conventional satellite terminals (with a battery that survives multiple years). Rather than interpersonal voice/data communications services, NB-IoT typically enables devices to interface with and connect to thousands of other devices, such as remote sensors. Additionally, they are designed for optimised data transfer, in small, intermittent bursts of data, according to the specific needs of the IoT application. Noting these differentiated features, among others, regulators must find a service authorisation model that is appropriately stream-lined for NB-IoT services and devices.

As such, India's existing IoT and M2M licensing rules could benefit if the regulatory framework for this type of service delivery is simplified further. While it may be possible to do so under current rules, it remains to be cumbersome, lengthy, and even costly. Simplifying the current licensing model by making it future-proof and adaptable to other forms of network provision would spur more investments in this area, and could potentially provide greater connectivity to millions of Indians.

Satellite spectrum management

Radio frequency spectrum is a scarce natural resource that should be managed effectively and allocated efficiently. For this reason, we support the efforts of the DoT in trying to provide regulatory clarity for managing spectrum. As stated in the consultation paper, to enable its more efficient use, repurposing of a frequency range for a different use and re-arrangement of a frequency range is often required. As such, the DoT is open to having rules concerning refarming and harmonization of frequency range, sharing, trading, leasing, and surrendering of spectrum assigned.

Sateliot is fully supportive of these initiatives, as these mechanisms have the potential to unlock greater value for the use of this scarce resource. These mechanisms could also open the possibility for the utilisation of spectrum for new areas and technologies, ensuring that their use is maximized. With the proliferation of new technology, the DoT could also look into the possibility of sharing spectrum among different uses, such as satellite and mobile, with the end goal of ensuring optimal allocation.

However, we note that these issues could be sensitive as well, especially when a specific frequency range is already allocated for a particular business segment. As such, we recommend that the proposed changes to the law exercise extreme caution in the conduct of these spectrum refarming or repurposing activities. Any process for doing so should involve in-depth assessments of the risks and benefits, as well as a conduct of a consultation with the stakeholders to be affected.

We are grateful for this opportunity to be able to partake in this consultation. Rest assured that we at Sateliot are committed to being a partner of the Indian government in bringing much-needed connectivity to every part of the country.

Sincerely yours,

Elisabet Fonalleras Nadal
Regulatory Affairs Manager

DOT Consultation on "Need for new legal framework Governing Telecommunications in India"

From : kgm@ozonetel.com Sat, Jul 30, 2022 12:48 PM

Subject : DOT Consultation on "Need for new legal framework Governing Telecommunications in India"

To : Naveen Kumar <naveen.kumar71@gov.in>

Dear SIr,

Greetings from Ozonetel Communications Pvt Ltd.

We are highly appreciative of the DOT initiative to reform and simplify the regulatory framework to support the current day Technologies and to encourage the sector to accomplish its fullest potential in service of the Nation.

Kindly let us know, if DOT has plans to conduct any consultation workshops in Major Cities across the country as it did when NDCP 2018 was under formulation.

Such Workshops were conducted and I was fortunate to attend one, in Bangalore and contribute to the initiative.

Ozonetel

K Guru Murthy

General Manager (Revenue Assurance & Compliance)

+91 93412 45635

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Comment - 'Need for a new legal framework governing Telecommunication in India'

From : narendrakumar cloud <narendrakumar.cloud@gmail.com> Sat, Jul 23, 2022 11:04 PM

Subject : Comment - 'Need for a new legal framework governing Telecommunication in India'

To : Naveen Kumar <naveen.kumar71@gov.in>

We have to stop auctions for specrum. And we have to bring universal cellphone towers. Instead of auctions, we have to bring a concept of pay per unit usage method. Here, the unit should be considered only after consultation with all stakeholders. The unit can be bandwidth per minute or data size or service based or number of users etc. Towers building in an area should be planned and auctioned by DoT based on the real time demand and signal strength. The people who have highest number of towers in a particular area should get priority when there is congestion and also, some percentage of reduced tarrif based on percentage of area covered by
1. their towers in that area and
2. slightly services/towers penetrated area in that state.
The tower erected companies shall get bonus of discounts on their tarrif when number of users or services increased in a below average services/users areas.
This will bring competition among service companies.

Centralized data center need to be created by the DoT to connect all the nearby area towers to it before redirect it to the service provider. This will help security agencies and DoT to control, deploy, analyse and more on all significant things.

Instead of just being communication centric, the DoT can act as catalyst in revolutionizing the spectrum usage method, bring more small players, change the structure to amalgamate govt and commercials on providing the best services etc. This will be a win-win-win situation to Government-people-investors.

Suggestions on Legal Framework on Telecommunication

From : priyap grewal <priyap.grewal@lloydlawcollege.edu.in> Thu, Jul 28, 2022 02:05 PM
Subject : Suggestions on Legal Framework on Telecommunication
To : Naveen Kumar <naveen.kumar71@gov.in>

Dear Sir/Mam

Please consider my suggestions for the upcoming law that will regulate the Telecommunication sector of our country :

1. Firstly and most importantly, there should be a provision on SHUTDOWN OF INTERNET by the Central/State Government.
The government unnecessarily shuts down internet on every small issues leading to loss to telecos and numerous problems to the citizens. In this digitalized era, shuting down internet is a nonsense thing to do, as today all the services are online and we depend on them everyday. I can understand that it is tool for the government to suppress people and their voices, and government will not ever throw away this massive power from their hands. But still if anything can be done, that would be appreciated.

FACT - India from 2021 has seen the most number of internet shutdowns.

2. Net Neutrality - the principle that internet service providers should enable access to all content and applications regardless of the source, and without favouring or blocking particular products or websites. I think there should be a law regarding this in our country.

3. Internet shutdown in Jammu and Kashmir for the longest time in the history of our world. This thing should also be taken care of. We should not target a specific area and please stop harassing people.

4. Spectrum Pricing - Prices for the spectrum in our country is the highest and our telecom companies are not in that good shape so that they can afford these prices. As a result, this leds to buying of less spectrum and poor quality for consumers. Please consult with TRAI and clear out this issue.

5. BSNL - China Mobile is the largest telecom company in the world and it is state owned. We have BSNL here but it is dying. Government killed BSNL just to provide relief and customers to a private company who is now known as Reliance Jio. BSNL uses equipments of C-DOT and works with TCS while all other private players uses chinese equipments, which are not safe. It doesn't have 4G spectrum till now, where 5G is going to launch. Government is planning to provide 4G spectrum but in the 900 Mhz and 1800 Mhz bands, which gives not that great speed. Please keep PSU's like BSNL and MTNL first in all scenarios, so that they can perform.

Thank you for your time sir and i hope this would help.

Regards

भारत दूरसंचार
DOT
INDIA TELECOM

my GOV मेरी सरकार

सत्यमेव जयते
Department of Telecommunications
Ministry of Communications
Government of India

Regulatory Framework of Telecom Business: Policies, Acts, and Licenses

In guidance of Hon'ble prime minister Narendra Modi sir and Hon'ble Cabinet Minister of Telecom and IT Ashwini Vaishnaw Sir ,We are drafting legal framework of telecom business

My few Points are :

Companies which have helped in increasing the regulatory framework of telecom business in India includes "Bharti Airtel, BSNL, etc."

Communication is one of the keys to survival. Technology is growing at it's best speed. Earlier it was difficult to reach out to people. With the up-gradation of technology, humans are just one click away from each other. Immense growth and development could be seen in the telecom services in India. Both foreign and domestic investors have helped this sector to achieve heights. As per the Indian Brand Equity Foundation with the Telecom Regulatory Authority of India (TRAI), telephone subscribers in India are approximately 1,200,000,000. According to the same sources by the gross revenue of the telecom services in India, dated as on March 31, 2019, was nearly USD 3,400,000,000. These companies have helped in increasing the regulatory framework of telecom business in India. Now in 2022 it is increasing many more in USD .

Telecom Authority of India is governed by the ministry of communication and Information Technology of India. It governs several bodies, which are described here under:

- Department of Telecommunications (DoT)

This Department works under the central government. It has the following responsibilities for the regulatory framework of the telecom services in India:

1. Granting licenses for several telecom services in india.
2. Establishing and maintaining the frequency in the department of Radio communication with foreign bodies too.
3. Establishing and maintaining wireless equipment.

- **Wireless Planning Commission (WPC)**

WPC is another department of DoT. It maintains the Frequency Spectrum Management, which includes wireless station licensing and take care of the requirements of all Indian wireless users.

WPC includes some major parts such as "Licensing and Regulation (LR), New Technology Group (NTG), and Standing Advisory Committee on Radio Frequency Allocation (SACFA)."

- **Telecom Regulatory Authority of India (TRAI)**

Telecom Regulatory Authority of India is the statutory body set up by the Indian Government. The Ministry of Communication and Information Technology governs the telecom industry in India. It improves the regulatory framework of telecom business in India.

- **Telecom Disputes Settlement and Appellate Tribunal (TDSAT)**

TDSAT has the power to solve the disputes between the license granter (DoT) and the licensee for the regulatory framework of telecom business in India. All the disputes regarding the telecom industry will be solved under TDSAT.

Laws for Regulatory Framework of Telecom Business

The Indian Telegraph Act, 1885

This is the veteran act in India and continues to be in effect. It was amended as per the changes in the rules and regulations in the telegraphs of the country. In the Preamble of the Act, *telegraph* is defined as anything, that incorporates an appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images, etc.

Important features of the Act are:

- It gives Power to the Indian Government to make changes in the Act for the growth of the telecommunication sector.
- Provision of this act provides power to the Indian Government to grant licenses to private bodies to provide telecommunication services on conditions *it considers fit*.
- It empowers the Indian Government to get the information by intercepting the messages for public safety and emergency.
- Any dispute regarding a telegraphic appliance/ apparatus/ line between the telegraph authority and a licensee (for whose benefit the line, appliance, or apparatus is, or has been provided) shall resolute by an arbitrator appointed by the Central Government.
- This Act provides the privilege of telecommunications services in India.

The Indian Wireless Telegraphy Act, 1933

This Act has the regulations regarding the possession of wireless telegraphy apparatus. Additionally, any apparatus, appliance, instrument, or material that uses or is capable of use in wireless communication. Any article for the wireless telegraphy, should not be other than the articles mentioned in section 10 of the Act.

As per the Act, any person having the license which was granted by the Indian government for wireless telegraphy apparatus possession allowed for the charging of a penalty if any wireless license is held without a valid license.

The Telecom Regulatory Authority of India Act, 1997

The telecom regulatory authority of India Act, 1997 empowered the TRAI with quasi-judicial authority to adjudicate upon and settle telecom disputes. In 2000, an act was amended to differentiate between the regulatory and recommendatory functions of TRAI which have been discussed above. The jurisdiction of civil courts has been expressly barred in cases where the TDSAT has jurisdiction, one of the amendments made in the act.

The Information Technology Act, 2000

IT Act was formed statutory to help e-commerce. Further, it helped in the digitalization of the documents and signatures as valid authentication of electronic documents. In 2008, the IT Act was amended for focusing on information security, and new sections were added for offenses related to cyber terrorism and data protection. This act provides penalties for several offenses such as "Cybercrime, E-Commerce Frauds like Cheating by Impersonation, And Pornography."

National Digital Communications Policy, 2018

The reason behind enacting NDCP was digital empowerment and well-being of Indian citizens. It outlines a set of goals, initiatives, strategies, and intended policy outcomes. In the same manner, the vision of the government in NDCP 2018 is to fulfill the needs of citizens. This policy helped the regulatory framework of telecom business in India.

The NDCP 2018 has goals to complete the following Strategic Objectives by 2022:

- Broadband for All
- Recruitment of four million in the digital communications sector

- In 2017, 6% was the contribution of the digital communications sector of India's GDP which should increase up to 8% in the next term
- In 2017 India was ranked 134. So the next goal will be propelling India to the Top 50 Nations in the ICT Development Index of ITU
- India's contribution to Global Value Chains should increase
- Digital sovereignty to be ensured

To achieve the above objectives, the NDCP think of the following three missions to the regulatory framework of telecom business in India:

- **To connect India:** for creating influential digital communications infrastructure to promote 'Broadband for All' in the country and use it as a tool for socio-economic development. Thus, Ensuring the service quality and environmental sustainability
- **To propel India:** to enable next-generation technologies and services through investments, innovation, and intellectual property rights (IPR) generation to harness the power of emerging digital technologies, including 5G, and big data to enable the provision of future-ready products and services along with catalyzing the fourth industrial revolution (Industry 4.0) by promoting investments, innovation, and IPR.
- **To secure India:** By ensuring independence, security, and safety of digital communications to secure the interests of citizens. Protecting the digital independence of India with a focus on ensuring individual autonomy and choice, data ownership, privacy, and security while recognizing data as a crucial economic resource.

The Broadband Policy 2004

With this policy, the Indian government aims to provide fast internet connectivity with the widest range. The use of Broadband specifically in the following sectors for the regulatory framework of the telecom business in India:

- Tele-education
- Tele-medicine
- E-governance
- Entertainment
- Employment generation

- Every Indian household

Licenses and Authorization

Huge transformations have been witnessed in the licensing process of New Telecom Policy (NTP), 2012 for the regulatory framework of the telecom business in India. 'Unified license regime' is introduced in the NTP which means that 'one nation, one license'.

Authorization under the unified license (UL) comprises one or more of the following services:

- access service
- internet service (and subsequent categories)
- national long distance (NLD) service
- international long distance (ILD) service
- global mobile personal communication by satellite service
- public mobile radio trunking service
- very small aperture terminal closed user group service
- Indian national satellite system mobile satellite system reporting service
- Resale of international private leased circuit services

Authorization for the regulatory framework of the telecom services in India

- Entities should incorporate in India.
- Entities must be compliant with the limits under the FDI regulations for the relevant sector.
- As prescribed by the central government, applicants will be required to pay the relevant fees and maintain minimum equity and net worth.
- Applicants are required to furnish a bank guarantee and that prescribes by the relevant authorities.

Comment by

ADARSH PANDEY

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Contact -9532713088

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Comments-Consultation Paper on 'Need for a new legal framework governing Telecommunication in India'

From : kaustav choudhoury <kaustav.choudhoury@rru.ac.in> Fri, Jul 29, 2022 10:10 PM
Subject : Comments-Consultation Paper on 'Need for a new legal framework governing Telecommunication in India'
To : Naveen Kumar <naveen.kumar71@gov.in>

Respected Sir

Greetings

At the very outset, I would like to extend my sincere gratitude for such a timely initiative in reviewing the law pertaining to telecommunication in India.

The Supreme Court of India though did not propound the "right to the internet" in the Anuradha Bhasin Judgement (2020) but laid down the preliminary block on which the edifice could be laid down. The Supreme Court also provided for limited recognition for the right to access the internet in the subsequent cases in the state of Kashmir.

Right to freedom of speech and expression and widening the ambit of article 21, warrants an updated and dedicated law on telecommunication in India that not only upholds the right for the same, but also reasonable restrictions. The offences and penalties are also required to be specifically defined as these precious rights are not to be misused. Along with it, the burden of proof is also to be fixed on the individual who breaches the public order instead of the state through its prosecution machinery.

The criminal liability needs to be fixed on the individual that disrupts law and order, national security, and rule of law in the area.

A meta-analysis of the judgments of the supreme court on telecommunication could also be undertaken so as to highlight the concerns of the judiciary in this arena.

With these preliminary comments, I look forward to voluntarily contributing myself to any engagement to equip the telecommunications laws in India.

My sincere regards
kaustav choudhoury

Thanks and regards,
Kaustav Choudhoury
Ph.D. (Submitted), UGC-NET (Law), LL.M (Crime and Criminology), B.A LL.B (H)[Gold Medal]

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Rashtriya Raksha University
An Institution of National Importance
Ministry of Home Affairs, Government of India
Gandhinagar- 382305, Gujarat, India

Inputs for new legal framework- Governing Telecom Sector

From : andasri@gmail.com Sat, Jul 30, 2022 07:42 PM
Subject : Inputs for new legal framework- Governing Telecom Sector
To : Naveen Kumar <naveen.kumar71@gov.in>

Dear official

Following are some of my comments (directly or indirectly related) to tighten existing legal framework. Will add some more in due course

1. National security must be given highest priority.

a) Earlier OEMs belong to unfriendly neighborhood country took away India's geographical sensitive data (upto small street level) from radio surveys, subscriber data from the servers residing in the country under their control . Though Govt trying to ban them from RfPs, these OEMs trying to take back route thru local partners for meeting eligibility criteria . Plus they keep supplying equipment to non Telecom domain viz. networking , security surveillance which are again threat to national security

b\ Networks along international borders need to be brought under special framework as they are vulnerable

2. Atma Nirbhar scheme- to move from 'Assembled in India'- all the manufacturers do not make devices from scratch in India. The devices are just assembled by trained and school educated women If we want true ' Make in India ', create frame work to encourage from taxation perspective

3. USOF- Need to combine Energy and Telecom . If energy is not available 24*7, USOF infrastructure will either be under utilized or abandoned

4. Subscriber protection enhancement- Service providers without the consent from users, removing lower plans and moving them to higher plans forcibly. Also same plan is being charged more without need for more usage.

5 RoW- . At present there is no third party reconciliation between how much RoW granted and executed. It is very well known fact that execution by service provider is more than RoW (length) granted most of the time . Service providers claim they rollout lacs of route Kms of OFC, at the same time need to know how much of that length (route KM is different from physical linear length) was permitted and the demand note by respective local body was paid

6. Spectrum utilization monitoring - need service provider wise for each serving area

Available for clarification for any of the comments above

Thank you

Andaluri Srinivas
My Gov User ID 962174
9246830478

Virus-free.www.avast.com

comment on the consultation paper

From : hvpachpande@rediffmail.com Mon, Aug 01, 2022 05:46 PM
Sender : hvpachpande@rediffmail.com
Subject : comment on the consultation paper
To : Naveen Kumar <naveen.kumar71@gov.in>

Respected sir
reduce talk time recharge rate and introduce new plan for android mobile only talk time and internet data separately

Thanking You
Hemant Vasudev Pachpande
9765478086
Jay Hind

Need for a new legal framework governing Telecommunication in India

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From : santosh india04 <santosh.india04@gmail.com> Tue, Aug 02, 2022 05:49 PM

Subject : Need for a new legal framework governing Telecommunication in India

To : Naveen Kumar <naveen.kumar71@gov.in>

Hi,

Please consider the below points for governing framework:-
1) Telecom companies should be regulated for any tariff hike.
--> currently companies are rising plan costs frequently and there don't seem to be any laws.
2) Any customer complaint must be addressed at a certain time decided by TRAI.
--> Most of the companies don't provide root cause analysis for network issues which occur frequently.
3) There must be no towers installed for a specific no of customer bases.
--> many times I have seen network congestion due to a high no of users in a specific area. Since the network is shared in all users they don't get the speed/connectivity required.
4) Need more strict laws for telecom companies.

Thanks and Regards
Santosh Kshirsagar
+91 9096925096

Telecom Law comments

From : manish gupte <manish_gupte@yahoo.com> Thu, Aug 04, 2022 06:39 PM
Subject : Telecom Law comments 2 attachments
To : Naveen Kumar <naveen.kumar71@gov.in>

My Dear Sir/Madam,

It is very good Govt is seeking comments on spectrum mgmt and new telecom law. I have done joint analysis with Indian Army Signals Corps and we looked at many of these spectrum, surveillance and intruder detection aspects.

First of all in my army work, we improved a fundamental idea in frequency detection - the Fourier Transform. Then I automated this process. And now we can detect many many frequencies and hidden networks. These were not seen earlier by normal spectrum analyzer. I am in Pune and I use hackrf one software defined radio. I scans from 1mhz to 7 ghz. Many of our communications are open to tapping and locating. Enemy can do big terror attack and we need strict laws and policing and counter measures like upgrading.

Also phones can be tapped with software defined radios. And same concepts can break encryption key - currently it is 'Manish's conjuncture' and it is 'still holding'. I am working on improving it.

We need to take our spectrum in our control and catch all intruders like unlicensed radio users. I have caught many sat phone uses who use hidden frequencies and their location is from Islamic neigbhorhoods. It is like freedom struggle, atom bomb and now spectrum control.

Also hackrf comes for 17,000 Rupees and it has lots of open source code on internet. What to do if someone jams police? exposes army navy institutes? catches airline frequencies and interfers? There have been cases in German were a hacker was pretending to be ATC and guiding planes at airport.

With simple vaccum valves and waveguide/tubes/directional antena we can do lots of Make in India. Govt should encourage this research. Please see my technical report and cv.

Thanks a lot and my best wishes

Manish

Technical_Report_Aug_2022.docx
224 KB

Manish_Gupte_June_2022.doc
35 KB

Technical Report

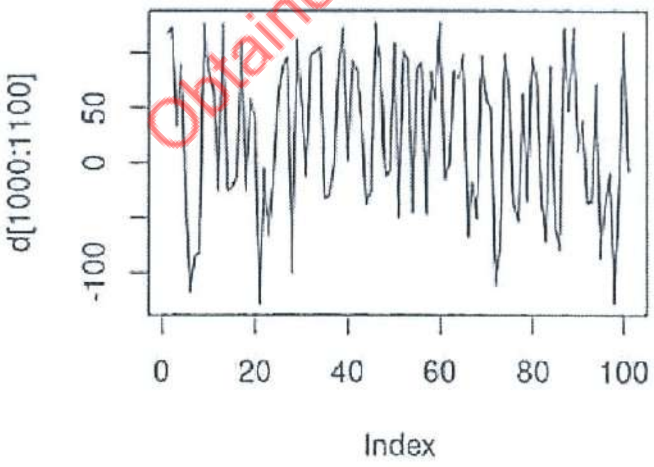
Dr. Manish Gupte

1. Introduction

I have done PhD in economics from USA and applied various mathematics and statistics models. I am also computer engineer from Pune Univ. This work was started during my college in 1997. This work took shape in joint analysis with Indian Army Signals Corps and also under supervision of Commodore in Indian Navy.

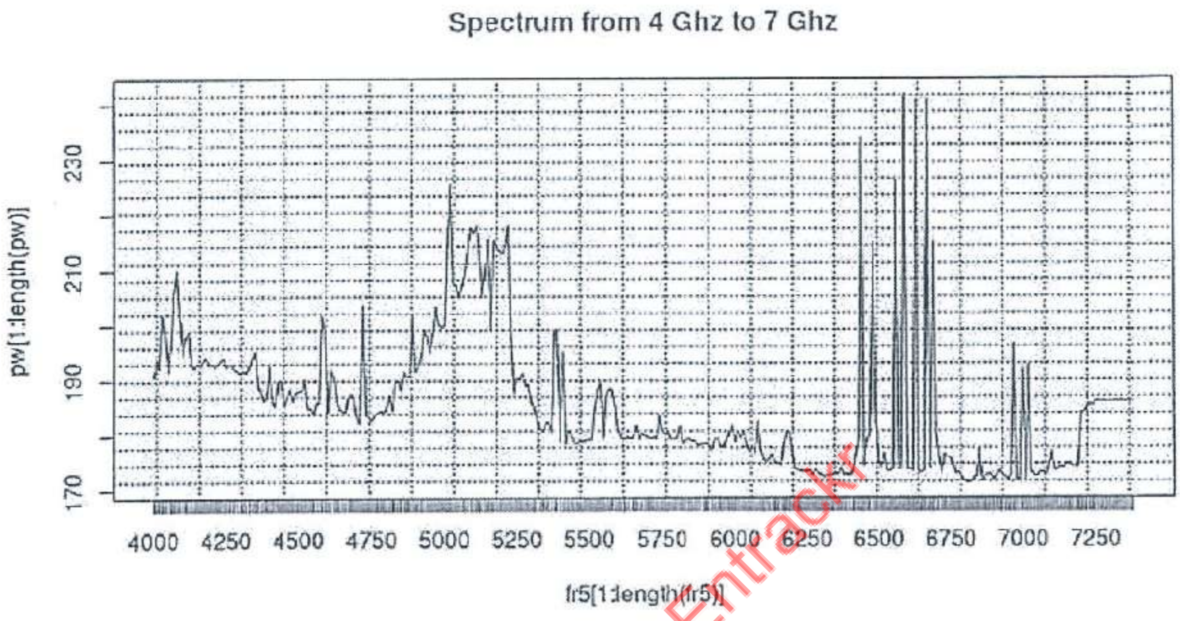
2. Limitation of Fourier Transform

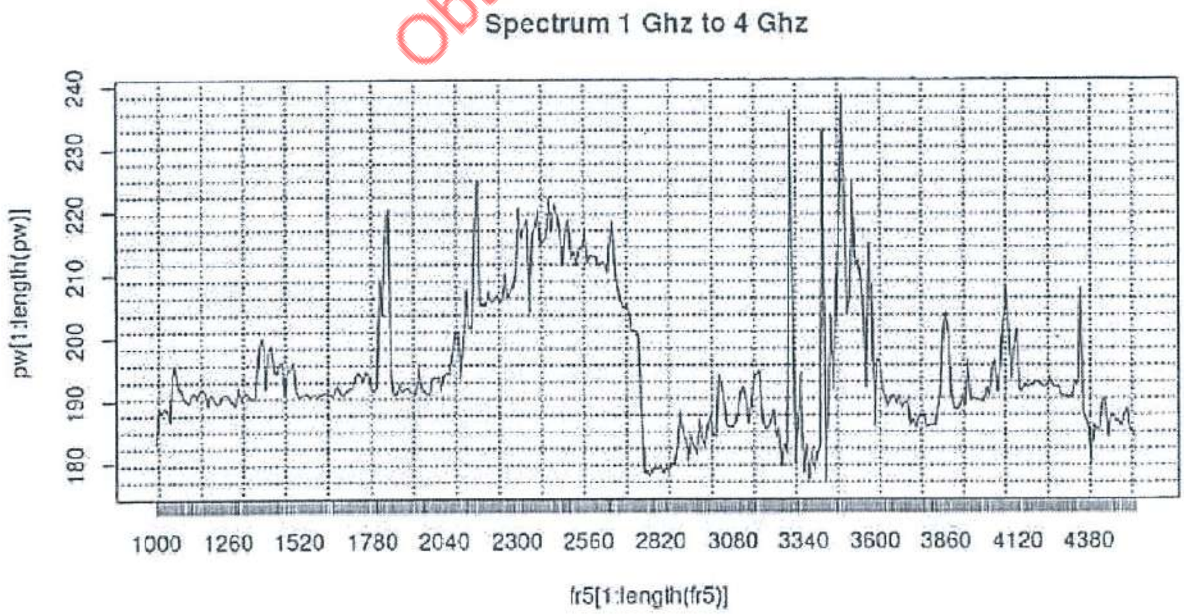
Fourier Transform is highly respected and used in almost every digital spectrometer. But it is simple correlation technique done in 1700s. It works poorly if frequencies are changing and shapes and patterns are used for communication. This is spread spectrum communication (frequency hopping is one such type). Fourier Transform misses all these signals. We recorded radio directly from antena by analog to digital conversion after mixer (HackRF One Software defined radio hackrf_transfer function, device has range 1 mhz to 7.3 ghz and 20 mhz sampling rate). The time varying plot of these signals looks like this:

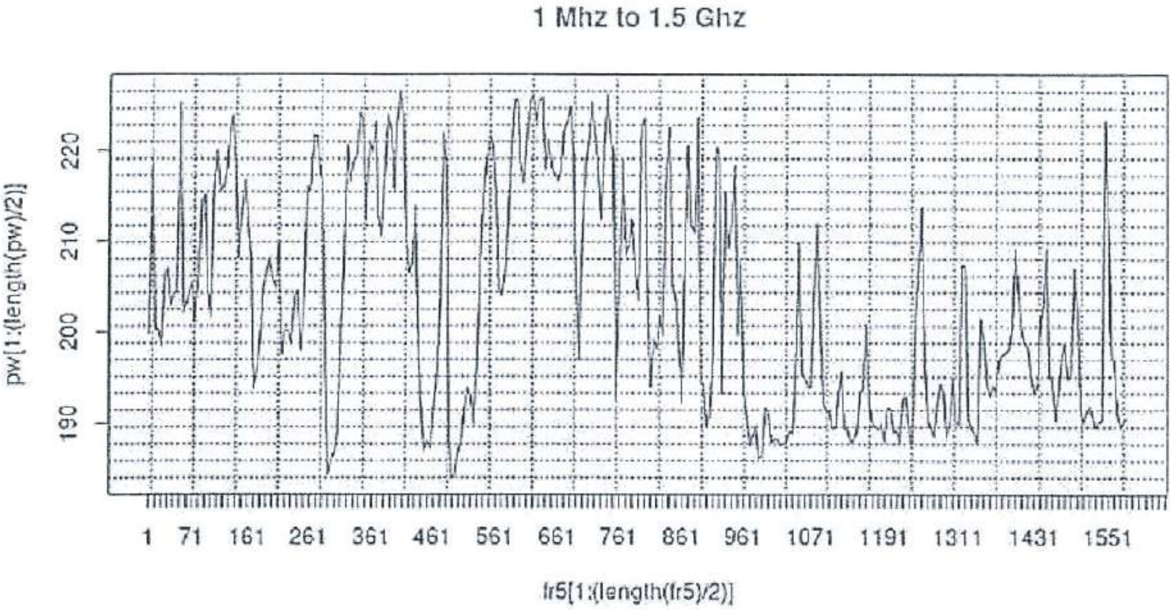


Then we took the y-axis width of how the signals 90% data is there. Just like inter-quartile range/width. This is basically how broad the signal looks when seen by eye but done automatically by R program.

We did this on blocks of data. Then we made histogram of these ranges. Normally radios are 2-way, 3-way, bridge, etc. So near by radio will have more width than far away radio. Clear bi-modal, tri-modal histograms were seen. In the following spectrograms made by recording off the air near Chandani Chowk, Pune the width of nearest radio is plotted. Many Army radio, radars, aircraft, drone, police and possibly UFOs could have been caught. Almost every where in this spectrum some predictable shape is seen:







See the three csv files for actual data which made these graphs.

In May-June 2022 I modified HackRF tools code and made this analysis fast. Now it works well along with QspectrumAnalyzer. I could catch some spread spectrum iridium sat phones which were near Kothrud, Pune.

3. Jamming spread spectrum

By curve fitting the actual frequencies of sine waves which curve fit data were found. Clear two lobes were seen some times. So the two lobs can be jammed with low power. How frequency hopping was also found by expand/contract of template. Sequences of random numbers were also curve fit to find out next frequency jump. The random numbers are R random numbers so work is pending.

4) Direction – antena, graph

Simple aluminum foil was used to shield 3 directions of antena and expose only one. The the width of signals was found by exposing each direction one by one. Many time repeatably the direction of most power remained same. So direction and location of these signals can be found.

5) Interception

Mobile phone protocols and encryption algo are known (GSM, LTE, SNOW, etc) so by analyzing these shapes of off the air recordings we can find the zeros and ones. Then for voice communication we used speech technology. We have developed speech compression, recogniton algos and we found few templates explain lots of data. Human language has limited templates. Normally ppl miss this point and go for many templates because they dont have out hand crafted speech algo. So by trial and error of all combinations of the key used for encyption we can break encyption as right key is one that gives meaningful language template – cognitive hacking. This type of cognitive patterns can be found in bank transfers and correlating number plates, family members' names and girl friend name with password and key. My Univ friend used to do this in CIA, she used to meet many high ranking ppl and find out personal info.

For unknown ptotocol ppl have written papers which analyze signals statistically like bird langugue. These are called correlation attack. Analyzing key combinations needs algebraic attack.

There are software like gr-gsm, air-prob hopping, kraken, ISMI catcher which do some of this things.

Separating voice patch from data patch especially in frequency hopping. Voice patch is normally GSM/GMSK and data patch is QAM. This we did by curve fitting and expand-contract of template.

6) Better encryption using low footprint directional radio and higher order encryption

An Android app which works like whatsapp but has much higher encryption should be written. Much more key length.

Then speech, audio, video etc can be compressed lots with chaos theory. This compression will reduce radio foot print.

Recently partly autonomous systems and starlink satellites seem to use this type of image semantics. Also starlink uses directional antenas. In cold war chains of directed radios were made to prevent detection and jamming. Now F-35 planes use such network topologies.

7) Vaccum radios and ADCs, super heterodyne

My grand father had vaccum radio. He said he used to hear All India Radio on that. But vaccum radio can go till 300 Ghz and even 2 tera hz. It is high power 300 volt device and easily Made in India. With that up/down (superheterdyne) conversion can be done and lots of radios can be caught. 5 Ghz adc design we have. This uses delay lines coax cables.

8) Submarine, naval and brain waves (Havanna)

The mic was broken and that wire was exposed and connected to audio sound card of laptop. Then 384 Kkz sampling rate recording was made. Many naval stations, atomic clock, and other stations were found. Mostly brain wave attacks were also detected, these could be Havana syndrome. Station were located. All this can be locally jammed.

9) Noise removal from seeminly random noise signals like radio recordings

Radio noise is not radom and there are patterns. The first step in this filtering was done. Work is pending.

10) Drone control by sending high power radio recording of drone signals

We discussed controlling enemy drone by recording and replaying its commands. I did this type of relay attack on Indian Army ethernet radio under EW workshop supervision. There was kharkhar in radio.

11) Intertial navigation systems – noise removal

Some basic start in making internial navigation system stable with curve fitting and noise removal. Also stock price prediction and cycles

12) Breaking encryption using statistics and simple computer using quantum computing algos

Seeing if quantum algos to break encryption can work on simple computer. After 6 months my conjucture still holds.

13) Atomic Energy (Highly restricted algo) for Corona forecasts and stocks forecasts and possible aircraft engine control

Many of the forecast came true and short term prediction is possible. Corona suddenly increases which seems like 'system failure', but our algo predicts correctly in advance. Also many stock indices and even stocks were predicted 5 days in future correctly. Manipulative cycles were identified and SEBI can use it to prevent volatality in markets and also catch manipulation.
I have been posting corona and stocks forecast on Linkedin and that time Lokheed Martin ppl see, apparently commercial off the self components can be used along with this algo and aircraft engine control can be improved

14) Work with Workshop of Signals Corps Pune

Got BladeRF software defined radio up. Tested low noise amplifier basic amplification. Created simple spectrum. Installed SdrGlut user interface and heard radio

15) Detecting and Locating Sat Phones in Pune

I am detecting lots of satellite phones in Pune. I took measurements at 3 places. Muslim dominated areas appear to emanate these signals.
These are spread wide band signals and use short bust communication, quadrature modulation and time domain multiplexing. Iridium (USA), Thuraya (UAE) and Visada (France) seem to be there

Consultation Paper on 'Need for a new legal framework governing Telecommunication in India'

Introduction:-

Telecommunication has the potential to unleash the true power of India's economy, accelerate socio-economic transformation and enable achievement of the vision of an "*Aatma Nirbhar Bharat*". Telecommunication is an enabler of digital governance that emphasizes data driven and people-centric delivery of goods and services to citizens and enterprises.

Legal framework for telecommunication in India is governed by Laws which were enacted long before India's independence. Technology has evolved significantly in the recent decades. To keep pace with emerging technologies, telecommunication legislation has evolved with time in most jurisdictions. These include United States (1996), Australia (1979), United Kingdom (2003), Singapore (1999), South Africa (2000) and Brazil (1997).

The criticality of telecommunication was underlined during the COVID-19 pandemic. Telecommunication emerged as a lifeline for the economy by enabling digital economy to function. Interactions that form the core of a well-functioning economy migrated from physical mode to digital mode. Particularly, remote working and online education gained popularity and societal acceptance. Telecommunication helped sustain demand for services and enabled people to remain connected. The number of telecom subscribers in India has grown from 1.5 Cr in 1997 to more than 117 Cr today. This represents a phenomenal 19% CAGR over a period of 25 years. India is today the second largest telecom market in the world.

Simplification of the regulatory framework:-

The Telecom Regulatory Authority of India (hereinafter referred to as the "Authority"), vide letter of even number dated 03rd February 2022, directed all the broadcasters to report to the Authority, any change in name, nature, language, Maximum Retail Price (MRP) per month of channels, and composition and MRP of bouquets, as per the New Regulatory Framework 2020, by 28th February 2022. Further, it directed all the Distribution Platform Operators (DPOs) to report to the Authority, Distributor Retail Price (DRP) of pay channels and bouquets of pay channels and composition of bouquets of pay and free-to-air (FTA) channels, as per the New Regulatory Framework 2020, by 31st March 2022. Furthermore, it directed all the distributors to ensure that services to the subscribers, with effect from 01stJune 2022, are provided as per the bouquets or channels opted by them. However, the Authority received several representations from DPOs, associations of Local Cable Operators (LCOs) and consumer organizations, highlighting the difficulties likely to be faced by them in implementing the New Regulatory Framework 2020. On the basis of the said representations, the TRAI started engaging with the stakeholders through formall informal interactions. Subsequently, a committee was constituted under the aegis of the TRAI, consisting of members from the Indian Broadcasting and Digital Foundation, the All India Digital Cable Federation and DTH Association, to look into the process of smooth implementation of the provisions of the New Regulatory Framework 2020 keeping in view consumers benefit and suggest measures thereof, and to identify impediments with counter measures for overall growth of the broadcasting sector.

Spectrum Management:-

Many Federal agencies use radio frequency spectrum to perform vital operations. NTIA manages the Federal government's use of spectrum, ensuring that America's domestic and international spectrum needs are met while making efficient use of this limited resource. NTIA carries out this responsibility with assistance and advice from the Interdepartment Radio Advisory Committee and by:

- establishing and issuing policy regarding allocations and regulations governing the Federal spectrum use;
- developing plans for the peacetime and wartime use of the spectrum;
- preparing for, participating in, and implementing the results of international radio conferences;
- assigning frequencies;
- maintaining spectrum use databases;
- reviewing Federal agencies' new telecommunications systems and certifying that spectrum will be available;
- providing the technical engineering expertise needed to perform specific spectrum resources assessments and automated computer capabilities needed to carry out these investigations;
- participating in all aspects of the Federal government's communications related emergency readiness activities; and
- participating in Federal government telecommunications and automated information systems security activities.

Right of Way:-

The Amendment Rules ease the **documentation process for Right of Way (RoW) application for overground telegraph line**, said the Ministry of Communications (Department of Telecommunications). The earlier RoW rules covered only underground Optical Fibre Cable (OFC) and mobile towers.

The Amendment Rules state that **there will not be any other fee other than the administrative fee and restoration charges** to establish, repair, maintain, shift, transfer, or work the underground and overground telegraph infrastructure.

The government has fixed a cap of **Rs 1,000 per km** as the amount of one-time compensation for the establishment of an overground telegraph line.

Significance

The rules further state that these amendments will aid in **easing RoW related permission procedures** for establishing and augmentation of digital communications infrastructure across the country.

With a robust pan-India digital infrastructure, the **digital divide between rural-urban and rich-poor in the country will be bridged**, stated the Communications Ministry.

The Amendment Rules notification stated further that **financial inclusion and e-Governance** will be strengthened. The information and communication needs of citizens and the ease of doing business will be fulfilled. The notification added that the dream of **India's transition into a digitally empowered economy** and society can be realized.

With the Indian Telegraph Right of Way (Amendment) Rules, 2021, in place now, the **clarity for laying overhead Optical Fibre Cable (OFC)** will also be available that will go a long way in **establishing necessary infrastructure for the rollout of 5G** projects in India.

The Amendment Rules as a part of the **Gati Shakti National Master Plan** stipulates that necessary [illegible] the lowest logistics costs, [illegible] Cellular Operators Association of India.

Abstract: The study is a modest attempt to

Framework for mergers, acquisitions etc:-

Mergers and acquisitions, in present scenario, have emerged as vital corporate strategies for rapid growth and development (Ramakrishnan 2010). Being a crucial financial investment decision (Gupta and Gerchak 2002), the performance aspect of mergers and acquisitions decisions has always been a keen interest area for financial researchers. In spite of being a largely explored area of research, the performance outcome of mergers and acquisitions decision is still an unsettled area, with a large non-convergence reflected in available literature (Roll 1988; Haspeslagh and Jemison 1991; Sirower 1997). On an average, performance literature reveals mergers and acquisitions to be a large failure (King et al. 2004; Cartwright and Schoenberg 2006). The view of strategic researchers on the performance aspects of mergers and acquisitions decisions significantly differs. According to strategic researchers, mergers and acquisitions are successful not only in the realization of underlying intents but they are also helpful in the attainment of other objectives (Brouthers et al. 1998; Lahovnik 2000). Mergers and acquisitions are strategic decisions and for the correct assessment of their effectiveness, appropriate strategic tools are requisite. Analysis of performance outcome, solely, using financial parameters is the prime cause of large failure rate, as exhibited in performance studies. Mergers and acquisitions are crucial strategic investment decisions. The large failure rate (as revealed by the performance literature) constitutes a rationale for more inA. Mittal (&) P. K. Jain Department of Management Studies, Indian Institute of Technology Delhi, Vishwakarma Bhavan, New Delhi 110016, India e-mail: anshu.mittal@dmsiitd.org; anshu_agrawal@hotmail.com P. K. Jain e-mail: pkjain@dms.

Expanding the scope of the USOF:-

The government plans to expand the scope of a fund meant to give subsidy to telecom companies for operating in rural and remote areas by including pilot projects for introducing latest technologies in such regions.

The Universal Service Obligations Fund, set up by the Department of Telecom in 2002, will from now on also give subsidy of up to Rs 50 lakh for technological innovations by operators that can help provide cheap and simple services in rural and remote areas, official sources said that .The objective of the scheme is to give exposure to new technologies for providing telecom services in rural and remote areas. The scheme will encourage innovations specifically suited to conditions prevailing in such areas.The type of projects which could be undertaken include rural broadband, rural telephony (fixed, wireless in local loop, mobile), transmission media in rural areas, telecom infrastructure in rural areas like tower and power plants

Standers, public safety and national security:-

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The preservation of national security is a multi-faceted endeavor that requires cooperation across a diverse range of initiatives and programs. Public Safety India functions as a centralized hub for coordinating work in counter-terrorism, critical infrastructure, cyber security and transportation security.

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From Usha Devi

User id :-69666524

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From AJIT

KUMAR SINGH

User id :-

66409814

Comment on Need for New Legal Framework governing Telecommunications

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From : akpandey67@gmail.com Fri, Aug 05, 2022 10:50 AM

Subject : Comment on Need for New Legal Framework governing Telecommunications

To : Naveen Kumar <naveen.kumar71@gov.in>

Hi Sir
The document in the website seem to just highlight some framework and not specific points.
My comment is on Specific law on DoNot Disturb
1. DND is too complex where the onus on DND is on Users.
My suggestion is Telemarketers should register with Operators and Operators should display Telemarketer on User phone. That way user has the choice to either pick or Not pick the call

2.Telecom Outage need to be braught under penalty

3. Now Aadhar/Banking etc are linked to phone number, so at least Incoming SMS needs to be activated even if subscriber doesn't pay. Operators should not be allowed to deactivate a SIM, It needs to be specifically deactivated by Subscriber.

Not sure if these are valid comments but do let me know in case the above makes sense.
Regards
Anil

Change in radio broadcast archeic laws.

From : bhattacharya dakshapriya
<bhattacharya.dakshapriya@gmail.com>

Tue, Aug 09, 2022 12:57 AM

Subject : Change in radio broadcast archeic laws.

To : Naveen Kumar <naveen.kumar71@gov.in>

Dear respected naveen sir...in reference to suggestions for changes in archeic telecom laws..as a citizen and media enthusiast this is to draw dots and ministry of information and broadcasting...kind attention to change archeic indian telegraph act and indian wireless telegraphy act as indian radio especially private fm radio channels,are still governed by this archic laws,which hampers growth of private fm radio in india even in 2022...as both the aforesaid acts hinder private fm radio to flourish in india..e.g. still today, private fm radio stations are not given total freedom to broadcast news current affairs and sports on their own rather are bound to parrot allindia radio news bullitens...sir,as a listener and citizen of india we want multiplicity of views opinion...india is the only country where this ban on private fm radio is imposed...plz share this views with mib...and hope dot and mib jointly look forward to change both the aforesaid archeic acts to something which is noteworthy both for broadcast sector as well as telecom sector...best wishes..eagerly waiting for reply..thank you.

INVITING COMMENTS ON THE CONSULTATION PAPER ON 'NEED FOR A NEW LEGAL FRAMEWORK GOVERNING TELECOMMUNICATION IN INDIA

From : vande matramuniverse <vande.matramuniverse@hotmail.com> Tue, Aug 09, 2022 12:08 PM

Subject : INVITING COMMENTS ON THE CONSULTATION PAPER ON 'NEED FOR A NEW LEGAL FRAMEWORK GOVERNING TELECOMMUNICATION IN INDIA

To : Naveen Kumar <naveen.kumar71@gov.in>

सुझाव - इन विषयों पर ध्यान दें।

1. IDENTITY THEFT/पहचान खोना - इसको बचाना।
2. स्वर रिकॉर्ड का दुरुपयोग होना - इसको बचाना ।
3. समय रहते ऑनलाइन दस्तावेज़ का निपटान अर्थात मिटाना।
4. निजता का ख्याल रखना।
5. कोई भी किसी का चित्र निकल सकता हैं और उस कोई को साइबर सुरक्षा का ज्ञान नहीं तो किसी का हनन हो सकता है।
6. ऑनलाइन प्रणाली बड़ीं तेज बदलती हैं।
7. सबकुछ आप जो लेते हैं वह LICENSE होता हैं।
8. ARTIFICIAL INTELLEGENCE को खुल्ला न छोड़िए कि वह आपकी रफ्तार से आगे निकल जाये और वो फिर वो करने लगे जो आपके आपे से बहार हो।
9. मानव अमानव अविश्वास विश्वास कि खाई जितनी बढ़ेगी उतनी ही ARTIFICIAL INTELLEGENCE पर आपका भरोसा बदेगा और वह आपकी रफ्तार से आगे निकल जाएगा और आपे से बाहर हो जाएगा जो काबू में करना उस वक्त मुश्किल हो जाएगा। जितना आप अगर अभी संभल केआर उसको काबू केआर पाये।

COMMENTS - ON THE CONSULTATION PAPER ON A NEED FOR A NEW LEGAL FRAMEWORK GOVERNING TELECOMMUNICATION IN INDIA - A FEW SUGGESTIONS

From : sharadagarwal8@gmail.com Wed, Aug 10, 2022 10:25 AM

Subject : COMMENTS - ON THE CONSULTATION PAPER ON A NEED FOR A NEW LEGAL FRAMEWORK GOVERNING TELECOMMUNICATION IN INDIA - A FEW SUGGESTIONS

To : Naveen Kumar <naveen.kumar71@gov.in>

SIR

BELOW ARE A FEW SUGGESTIONS FOR THE ABOVE SUBJECT

1 THE TELECOM TARIFFS RATES SHOULD BE FIXED BY THE TELECOM REGULATORY AUTHORITY OF INDIA AND NOT THE TELECOM COMPANIES

THE TELECOM COMPANIES SHOULD COMPETE AMONGST THEMSELVES FOR PROVIDING BEST QUALITY SERVICES TO THE SUBSCRIBERS

THE SUBSCRIBERS SHALL CHOOSE THE TELECOM OPERATOR BASED ON THE QUALITY OF SERVICE PROVIDED AND NOT THE TARIFF

2 FIXED AND REGULAR REVIEW OF THE TARIFFS BY THE TELECOM REGULATORY AUTHORITY OF INDIA SHALL ELIMINATE UNHEALTHY AND CUT THROAT COMPETITION AND RIVALRY AND CREATION OF MONOPOLIES IN THE TELECOM SECTOR IN VIOLATION OF THE FAIR TRADE PRACTICES - MRTP ACT EARLIER AND NOW THE COMPETITION COMMISSION OF INDIA RULES AND REGULATIONS

3 THIS WILL ALSO ENABLE A LEVEL AND FAIR PLAYING FIELD FOR ALL THE TELECOM SERVICE PROVIDERS AND ENSURE SURVIVAL FOR ALL BASED ON THE EFFICIENCY IN PROVIDING QUALITY SERVICES TO THE SUBSCRIBERS

4 THE TELECOM COMPANIES SHOULD NOT BE ALLOWED TO OFFER HANDSETS WITH PRE FIXED SIM / THE HANDSET CAN BE PROVIDED BUT THE SIM SHOULD NOT BE PRE FIXED IN THE HANDSET AND THE SUBSCRIBER SHOULD BE FREE TO BUY THE SIM FROM THE OPEN MARKET

5 IF PRE FIXED SIMS ARE ALLOWED IN THE HANDSETS SOLD BY THE TELECOM COMPANIES THEN THE BUYER CAN NOT SELL THE HANDSET TO ANY ONE EVEN IF HE WANTS TO BUY A NEW HANDSET BECAUSE THE HANDSET IS DESIGNED LIKE THIS - PRE FIXED SIM IN THE HANDSET = THE SUBSCRIBER GETS BOUND TO KEEP THE HANDSET

6 HANDSET AND SIM SHOULD BE FREE AND INDEPENDENT OF EACH OTHER - NO COMPULSION ON THE SUBSCRIBER TO BUY THE HANDSET WITH A PRE FIXED OR PRE INSTALLED AND PERMANENTLY FIXED SIM IN THE HANDSET

THE ABOVE ARE A FEW SUGGESTIONS

THANKS - REGARDS

SHARAD AGARWAL
BCOM FCA
CHARTERED ACCOUNTANT
GWALIOR MP

8962591880 / 6232073380 / 9109591880

Inviting comments on the consultation paper on "Need for a new legal framework governing Telecommunication in India"

From : rnigam@iitk.ac.in Sat, Aug 13, 2022 12:33 PM

Subject : Inviting comments on the consultation paper on "Need for a new legal framework governing Telecommunication in India"

To : Naveen Kumar <naveen.kumar71@gov.in>

Dear Sir,

Reference subject mentioned above, please peruse the following comments:

1. A case registered on Consumer Helpline (INGRAM)

Grievance Details :

Grievance Number: 2087567 Grievance Reg Date: 2020-07-01 16:29:48 Grievance Type : Complaint Grievance Details : Previous Complaint Number: 2082680 Company name :- VODAFONE Connection number :- 9721666626 Alternate number :- 9555180141 Plain:- Postpaid plain Problem :- He has a Vodafone postpaid connection 9721666626 at this time his problem is that in APRIL MONTH 2020 he paid the amount of Rs 1099/- (annual rent per year) to company but company added this rent amount in every month bill regarding this he contact with the company many times so company replied him they change his plan and he will pay this amount in every month (without consumer information) due to this he wants to lodge a grievance . Expectation :- he wants activation of his previous plain. company response" Dear Customer, We regret for the inconvenience caused to you. There seem to be a technical problem hence, the rental is been charged for every month. We kindly request you to visit nearest vodafone store and ask them to correct your plan. For any further assistance you may write us on customercare@vodafoneidea.com. Regards, Shaboni " Present status : consumer said that he not get any resolution from company side Agent Remark : Advised him send written grievance to the company via mail Vodafone reply: Dear Sir/Madam, Greeting from Vodafone Idea limited, We sincerely regret for the inconveniences caused to you., As per email interaction. We would like to summarize your concern regarding bill of your Vodafone number is As per system check, we would like to explanation of June 2020 month bill is @1418.21/- Monthly rental -@1099/- Call charge -@2.42/- local call Call charge-@.44/- STD call Late payment charge-@100/- Taxes-@216.34/- Grievance: They are reading or resolving the grievance. I had annual rental plan till April 2020. company replied him they change his plan and he will pay this amount in every month (without consumer information) due to this he wants to lodge a grievance . Later Madam Shaboni, Vodafone Company has stated in the email that " There seems to be a technical problem hence, the rental is been charged for every month." So, my plan and bill are both wrong due to technical issue at company end. I request to activate my plan and correct plan and bill.

The above query was not resolved. I tried to file a case on cosumer commission website (recent online facility). But it is pending due to formalities.

2. The Digital India programme depends on telecommunication network. Like OTP for Internet banking are send on mobiles. In case of cyber attack, whole system can get affected all over India. Telecommunication networks have lot of private and foreign assets and involvement.

3. Thankfully, BSNL is revived. Please improve service delivery. Keep a check on them through transparency. Dont allow bureaucrats to hinder working. 2G scam was reported. Let expertise people work for competition.

4. Dont let foreign based companies behave like East India company. As big foreign investments (private too) are foreign state backed.
5. Maintain privacy, security, Aadhar details and multiple identity documents are required by telecommunication companies too.
6. Dont let telecommunication companies increase price, plans too much or randomly. The plans of Rs. 49/- of Jio have reached Rs. 99/- or 149/- or stopped. India has large consumer base to make them profits.
7. Consumer commission online faciity should have less documents. Tribunals should be empowered and transparent working.

Yours sincerely,
RAVI NIGAM
Research Scholar-IITK
Mob.: 7531941676

Comments on Consultation Paper on Need for a new legal framework governing Telecommunication in India

From : venky108@yahoo.com Tue, Aug 16, 2022 11:09 PM

Subject : Comments on Consultation Paper on Need for a new legal framework governing Telecommunication in India

To : Naveen Kumar <naveen.kumar71@gov.in>

S.S.Venkata Subramanian,
MSc,M.Tech,LL,B,PGDFM,M.Phil, M.Phil
Advocate
Mahalakshmi Flats, B/1B,
45 Gugan Street, Chennai 600024
Mobile: 9176425933

Respected Sir,

With due respects, the telecommunication law needs to address the current requirements of usage.

Though the framework does not contain certain aspects, I respectfully submit the suggestions for improving the framework of telecommunication compliance and governance.

1. Telecommunication and Regulatory Authority (TRAI) needs more power so that the citizens having issues with mobile service provider can approach TRAI to resolve the issues

2, Telecommunication Mediators should be appointed for each State initially and also for major metro cities. This is more of a volunteer position and empanelment should be done.

3. The minimum recharge for prepaid should be fixed at Rs.50/- for voice alone for all service providers. The validity period also should be extended to 180 days across all service providers

4. There should be data alone plan with a minimum plan of Rs.100/- per month with a validity period of 180 days. Unlimited data plan should have an upper limit of Rs,900/- per month.

5. Combo of voice and data should have a minimum plan of Rs.75/- with a validity of 180 days.

6. Annual validity combo unlimited package should have an upper limit of Rs.1,500

7. SMS alert should be made mandatory for service providers, which should be triggered before 10 days of the expiry date.

8. Post expiry data, there should be minimum penalty of Rs.10/- for the first week and Rs.20/- for the second week. From third week onwards, Rs.5/- per day should be penalised. At the end of the fourth week, if the subscriber does not recharge his account should be terminated.

9. Presently, if the customer does not recharge on a particular day, the entire balance is taken by the service provider. Hence, if there is no SMS alert provided by the service provider, the service provider should credit the customer with a minimum amount of Rs.20/-

10. Point 7 and 8 of the consultation paper should incorporate the above suggestions.

11. Point 9 should include usage of IP telephone by individuals and corporates. The telecommunication Act should define terms in a clear manner without any ambiguity. It should avoid deeming provisions from other enactments and also avoid use of phrase " as it deems fit".

12. The new law should provide a clear formula so that the service providers and users are aware of the exact amount which they need to pay or receive, as the case may be

13. Point 10 should include monitoring by the government and compliance of the standards by the service provider. The service provider should evolve a detailed risk management plan and the same should be approved by the government.

14. Point 11 should be simple and should have the main Act and Rules. There should not be multiple documents like guidelines and orders etc., The Act should state the functions and also the implementation. The rules should be based on the Act and should be drafted in a clear and concise manner.

15. Point 12, The new law and rules should be prospective only. But at the same time there should be a cut-off data for transition to the new law and rules which should not be more than three months from the date of notification of the Act and the Rules. Also, Act and Rules should be notified simultaneously.

16. Point 13, If the law and rules are clear, investments should not be a hassle. In order the ease the promotion, there should be a regional office across all metros to start with. This office will monitor the service providers win their region.

17. Points 14, 15, 16 and 17. SPECTRUM is an valuable asset and needs to be managed properly. There should be a separate management clause in the main rule itself. This will be easier for compliance and monitoring. All the policies should be merged with the Act and Rules. The pricing of SPECTRUM should be based on the capability of the service provider and the technology road map should be disclosed by the service provider. Vendor based allocation should not be allowed and there should be direct contract between the government and service provider only.

18. Points 18, 19, 20. The term Right of Way is not defined in the paper. It should be defined in an appropriate manner. The definition should be Right of ways means and includes the government's power to oversee the spectrum infrastructure, management, implementation, effectiveness, issue resolution and other related activities related to spectrum management, the government shall erect ducts and cable corridors for developing an integrated infrastructure. The government shall levy a sum of rupees based on the technology and the service provider shall pay the amount. The amount fixed shall be based on the formula which will be arrived by the DoT.

19. Point 21. The scheme of mergers, acquisitions and demergers shall be based on the SEBI guidelines incase of listed companies and also the provisions in the companies act. In case of non-listed companies, mergers and acquisitions needs to be approved by the concerned Registrar of Companies based on the verification of the following documents. a) Financial health of the transferor company. b) Financial health of the transferee company. c) Annual audited reports for the past five year of both transferor and transferee company. e) Justification document of merger/demerger signed by all the stakeholders. f). Risk management framework for merger/demerger approved by the auditors. The entire document set should be submitted to the DoT and the DoT will review and provide a first level feedback within 60 days. Based on the feedback, the transferor/transferee company should revert

within 15 days. If they fail to revert, the entire process should be discarded. In that case, the government can step in and request any other company for merger/ demerger within 90 days. The decision of the government is final.

20. Points 22, 23. The service provider should provide a detailed Business Continuity Plan to the government duly approved by the auditors. This Business continuity plan should be reviewed every six months by the service provider and a report should be sent to the government. Due diligence should be conducted every year and due diligence report should be submitted to the government once a year. This will address insolvency issues and ensure that there is continuity in spectrum usage.

21. Point 24. All the universities in India, including IIT, IIM and deemed universities should be mandatorily required to commence a centre of excellence in Telecommunication technology and should provide approach papers for developing telecommunication service in rural and urban areas, identify new technologies using incubation activities and provide cost effective training to the people. They should also offer personal certification programs. Seed fund should be provided to the universities which offer to commence centre of excellence in telecommunication.

22. Point 25. The law on penalty should be simple. If a service provider breaches or violates the provision of law or rules, the license will be cancelled immediately. Revocation of license should be done by the Ministry based on a penal fee as decided by the ministry. This amount should be fixed at a reasonable value.

23. Points 26, 27. The new should also address public safety and national security. Before that, we need to evolve a telecommunication standard which is similar to ISO 27001 for information security. Appropriate controls should be built into it. ISO 27001 can be used as a baseline standard and appropriate information can be added into it and rolled out as a baseline standard. The standard can be revised every year. Security breach should be monitored and appropriate corrective and preventive actions should be implemented. Service providers should submit a detailed Corrective and Preventive Action Plan to the government during every quarter of a calendar year or financial year.

24. There should be a provision for Certified Telecommunication Professional (CTP). This is similar to Insolvency professional. Initially a grandfathering scheme can be rolled out to identify talented people to register as CTP. Subsequently the individuals should be enrolled based on viva-voce exam only.

25. The proposed new law and rule should be simple and easy to use and if the above points are considered, it will be robust and ensure that there is a balance between service providers and users.

Thanking you,

Yours Sincerely,

S.S.Venkata Subramanian

Suggestions for new telecom consultation paper

From : sharadtyagi@yahoo.com Sat, Aug 20, 2022 11:51 PM
Subject : Suggestions for new telecom consultation paper
To : Naveen Kumar <naveen.kumar71@gov.in>

Dear Sir,

I would like to post my views about Security.

Since Internet connectivity has become a necessity not for individuals, but businesses and country at large.

International connectivity is a critical part in this, hence our life lines of internet connectivity the submarine cables are a critical element of this, but as per the current status of things Majority of India's submarine cable land in two cities, Mumbai and Chennai(that too on an area of 2-5 kms on the beach) , my suggestions are

1) Government should ask submarine operators to spread this to different cities on both east and west side of India or ask new upcoming projects to land in different cities.

2) Submarine Cables even if owned by private operators should be treated as Critical assets for Country's telecommunications and protected.

3) Diversity planning of the infrastructure of submarine cable assets (Cable landing stations etc) should be asked for by the government .

Just to let you know that in US after the 2001 attack the , security commission saw this as threat and asked all Submarine cable operators to split the cables between two Landing beaches on east side of the country against all cables landing at same beach prior to that.

Regards
Sharad Tyagi
09321015230

Email **Naveen Kumar**

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comments on "Need for a new legal framework governing Telecommunications in India"

From : VARUN SINGH <varun.rathore@gov.in> Mon, Aug 22, 2022 04:58 PM
Subject : comments on "Need for a new legal framework governing Telecommunications in India"
To : Naveen Kumar <naveen.kumar71@gov.in>

Sir,

This is in response to your invitation for comments on Consultation paper on "Need for a new legal framework governing Telecommunications in India"
My name is Varun Singh Rathore and i am working as Junior Wireless Officer (JWO) in Wireless Monitoring Station, Ajmer, which is a field office of Wireless Monitoring organisation (WMO) of DoT.
This Organisation functions as per the Indian Telegraph Act, 1885 ("Telegraph Act") , and i wish to provide my inputs in the framing of new legal framework governing telecommunications in India .

1. **Expanding the ambit of Wireless Monitoring Organisation**:- WMO functions mostly on a complaint basis by wireless users. The scope of penalty and busting illegal wireless networks by WMO is hindered by the extant ambiguous act and rules and the following uninterest of top officers in implementing the act. The extant rules cater to the times of British India of 1885 but are irrelevant today. This is evident from the fact that WMO has not imposed any penalty in many years (as per my knowledge, never has any penalty been imposed)

2. **Aloofness of WPC**:- WMO functions as eyes and ears of WPC. However, WPC stays aloof and does not provide any data to WMO. In the lack of data, WMO fails to get on ground situation of wireless users. With Digital licensing and real time synchronisation between WPC and WMO, WMO can know in real time about legality of wireless users and changes in frequency allocation. **WMO may be granted powers of inspection (by JWO and engineer) of any wireless equipment and penalty by the new act.**

3. **Accountability of WMO**:- WMO should be made accountable for busting illegal networks. In the lack of it, WMO would stay insouciant.

4. **State of the art equipments**:- WMO does not have the required equipments as per the times today. With 5G and 6G coming, WMO has not updated itself with state of the art equipments. WMO does not have a single functioning direction finder in the whole country. There have been complaints from China about illegal operations in India (using their satellites), WMO does not have the capability to tell other sovereign countries about the same.

5 **Lack of training**:- Training needs to be imparted to officials of WMO to face the interferences of the times ahead. With expanding 5G and 6G services, there will come multiple interferences- which the personnel of WMO might not hunt in the lack of updation of knowledge of ever updating technology.

As Junior Wireless Officers (JWOs) are the on-ground hunters of interference- they need to be trained massively. IITs, NITs, ISRO, industry bodies may be looped in to train JWOs to be future ready. Massive focus should be placed on Drone Monitoring and Remote monitoring.

WMO will prove to be an important body with respect to future interferences. With IoT and 6G, when every machine will communicate with other machine, there will come interferences at an unprecedented level and WMO will have to put in its resources for which it needs to be trained today and the rules need to be updated.

Regards,
Varun Singh Rathore
JWO, WMS Ajmer

Azadi Ka
Amrit Mahotsav

RE: Need for a new legal framework governing telecommunications in india

From : rkapur54@gmail.com Mon, Aug 22, 2022 09:42 PM
Subject : RE: Need for a new legal framework governing telecommunications in india
To : Naveen Kumar <naveen.kumar71@gov.in>

Dear sir,

we need to highlight changes in policy to bring more clarity in

(a) role of Govt., ie DOT who has power to license service providers for bigger investments and deployment of state of art telecom infrastructure across the country including penalizing against breach of license terms and interception of services for national security.

(b)role(s) of Regulatory/ Administrative authority(es) for facilitating optimal appropriation of limited resources like spectrum, right of way and tower locations etc., resolution of issues with local authorities , setting up benchmarks for quality of service , introduction of new technologies and resolution of difficulties faced by service providers .

Three main issues according to my understanding stand out for amendments in existing framework are **unbundling of unified license for service providers by DOT and creation of Administrative authorities for Spectrum Services and Satellite communication services** . I do expect improvement and achievement in objectives set forth above once these changes are effected.

-

1.0 DOT should consider alterations in scope of telecom service licenses:

This is needed to bring more emphasis on Customer service license , overlay network license and core network license . While customer services and overlay network set up shall be taken out from unified license , other licensed services namely ISP,NLD and ILD, Data centres and Switches shall be merged in Core network license. Core networks shall be pan India and accessible via Gateways for various LSA's/ SSAs with more emphasis on deployment of newer technologies. Customer and Last mile overlay services may be licensed LSA/ SSA wise..

1.1

Customer service infrastructure licenses:: Licenses should be provided for telecommunication customer services LSA/ SSA wise. They may sign interconnectivity agreements with Last mile and Core networks along with commitment to both DOT and TRAI as regulator as part of their license. The more is number of such Licenses the more shall be investment as well as growth in SaaS based technology customer services..

1.2

Last mile overlay network Licenses::Last mile licensing may also be created to enable smaller investors to be part of telecom service infrastructure. They shall sign interconnect agreement with core network gateways . As last mile is predominantly coordination with local authorities better results can be expected. Spectrum allocation or sharing shall be authorised for last mile infrastructures at Gateways.

Licensing and other costs can be subsidised by DOT for operation in such LSA/ SSAs that do not generate enough revenue against USOF collections that may continue.. More players in Last mile shall be helpful to bring more investments and innovation in technology used for last miles. Small investors shall also be able to participate in services for far flung areas.

1.3

Core network infrastructure Licenses:: Unified licensing may be to restricted to core network with gateways for interconnection via Last mile infrastructure and SaaS based customer services. As all new services are deploying higher technology and synergy of cloud computing coupled with AI , DOT should redefine Core Licensing by adding NLD, ILD , Data center licenses in it etc. . Such licensee should be expected to set up Gateways for services in 22 LSA and 322 SSAs. Technology for Last may overlays upon these gateways may be decided by overlay licensees for better quality and internet capacity. This is likely to help CORE network have more focus on deploying newer technologies and going beyond 5G . Country shall be quick to see state of art core networks deployed once the licensees get rid of their involvements in last mile and customer care responsibilities that they shall execute via interconnect agreements allowed in license terme and conditions. All revenue billing and payments to DOT shall be part of core license terme and conditions. USOF fund may be used in remote and island last mile licenses for BB internet services . Such infrastructures may be terrestrial or satellite based. Core networks may deploy satellites to set up gateways for satellite based last miles.

2.0 Administrative authority for spectrum allocation & services:

DOT should set up a separate body for allocation of spectrum for commercial deployment by core network service providers , and all other matters related to revenue generation .

Spectrum being a limited and most sought resource for telecommunications and its future growth, its price and sufficient availability are important for better telecom services. Spectrum is available in various frequency slots and is to be shared among all telcos in their last mile services. Last mile spectrum services are deployed both for mobile communication growth as well as for point to point connectivity and WI fI hotspots. Spectrum for satellite services too shall be needed for their Gateway to terminal links. Spectrum sale can continue as per present policy for core network licensees and further connected to to last mile infrastructure on pay as you use basis. Such a regulation shall ensure availability of spectrum to service providers, who has operational last mile infrastructure and subscriber base. Core networks in that case shall be equipped with all the spectrum allotted for utilization by last mile licensees.

3.0 Administrative authority for Satellite telecommunication services:

DOT should work with DOS to set up an administrative authority for development of satellite communications in the country. Satellite communication infrastructure has not developed in time that has passed away because DOS and DOT both need to coordinate the planning and infrastructure installation. Investments in this area do not generate sufficient revenues for service providers and therefore services especially BB internet is still not available in remote villages and islands.

We all know that it shall be difficult to have sustainable terrestrial network to cover entire country locations with similar level of uptime and internet data rate. Entry of Satellite infrastructure in the telecommunication infrastructure is now long due. NGSO Satcom is complimenting GEO Satcom to serve Broadband internet services due to low latency in NGSO satcom services. Most of operators in NGSO Satcom are global and have set up their core networks to serve various locations in countries across and islands through their Gateways which are terrestrially interconnected by fiber. Satellite operators are providing standalone Gateway services too from their GEO and NGSO constellations. In India ISRO is the only operator and a policy change is needed. Gateway policy approved by both DOS & DOT is needed to bring in more investment in this area. Development of Satcom may require a separate regulator or strengthening of TRAI with a separate satellite division. Satellite communications is seeking more spectrum to compete with terrestrial telcos world over on commercial competitiveness. This can not be ignored for covering vast areas so far not on internet service footprint.

With regards,

RAKESH kAPUR
ITS"76, EX EXEC DIR (CN)
BSNL
9418068000
rkapur54@gmail.com

Need for new legal framework

From : khpsharma77@gmail.com Tue, Aug 23, 2022 03:30 PM
Subject : Need for new legal framework
To : Naveen Kumar <naveen.kumar71@gov.in>

Sir
The legal framework in India with regard to telecommunications is as old as 50 years and needs immediate revision of the laws governing Cybercrimes Fraud Loan Apps etc.Thousands of people are falling prey to the fake and bogus sites on the internet and losing their hard earned money in lakhs of rupees.
The telecommunications department should repeal the laws and award stern punishment to those offenders. Punishment for Cybercrimes should be very rigorous imprisonment and severe penalty.Otherwise these sort of Cybercrimes will be continuing and thousands of people will be on the roads after losing their money.
Dr K Hariprasad
9985306509

Comments/Submissions on Consultation Paper on 'Need for a new legal framework governing Telecommunication in India'

From : arvind kansal <arvind.kansal@rediffmail.com> Tue, Aug 23, 2022 06:33 PM

Sender : arvind kansal <arvind.kansal@rediffmail.com> 1 attachment

Subject : Comments/Submissions on Consultation Paper on 'Need for a new legal framework governing Telecommunication in India'

To : Naveen Kumar <naveen.kumar71@gov.in>

Sir,
AS discussed, please find enclosed my inputs on consultation paper.

Regards
Arvind Kansal
ITS (Retd)
9971213929

20220823_Consultation_Paper_final_23072022_DoT.docx
391 KB

Consultation

Paper on

'Need for a new legal framework governing Telecommunication in India'

Comments/Submissions

First let me thank the present management to take this initiative of long pending reforms in Telecom field. My submissions are as under:

1. For inclusive growth, the very first thing is to now change it to ICT as all information related services are converged now because of technology advancement. Now it should not be Telegraph Act. It should be ICT Act.
2. The way world is moving from Telegraph to ICT (inclusive growth in Information field) the complete system will be changing all across. Now from road transport to Information transport we have observed during Covid. Therefore, we need to have policy on I (Information) way in addition to Highways. This has become the basic need like roads. Policy should include to create Iway. The basic infrastructure for Iway is Optical Fiber and Towers/small wireless nodes (in 5G). Presently we are far behind other countries in this infrastructure. Rather than only concentrating on ROW, we need to think how to create "Dig Once" (Like road creation) for OFC and create Wireless Nodes Infrastructure. Since tower/Wireless node is location based, it is easy to make policy for shared concept by telecom operators. However, for Fiber policy has to be inclusive. Some initiative has been taken by Government for rural India (by BBNL) for nonviable business cases. However, because of policy gaps it has not reaped the fruits as expected. The issue of ROW (being number of agencies for permission). In national forest permissions are practically denied or delayed or heavy charges and so on. Another issue is multiple cables by multiple operators on same route resulting in wastage of Indian money and also quality of service impact and thus life of network. Till "Dig Once" concept like road creation is not implemented the penetration of fiber to each premises in India will be dream. Also, RoW permission process is to be practically mandatory in timebound manner with fix charges to be included as part of costing of capital requirement of project. If permission applied is not given in defined time it must be deemed as permission given. Country has suffered a lot because of ROW issues and parallel laying by each operator of OFC. This needs urgent review and action. TRAI came out with EOI for Pilot project of "Dig Once" in Deoghar, Jharkhand in year 2017. But it was not seriously planned and no one came forward. That may be taken as base document for review to avoid failure in implementation.
3. Wherever roads are under construction, OFC network should be part of the SOW like sewer, drain etc. A corridor can be created for utility services along the roads. These initiatives have been taken by Government, but since it was never considered mandatory, it has not been implemented seriously. In some pockets it has been implemented successfully. Examples are there in Nagpur municipality (for some pockets long back) and Mumbai Pune route as per my knowledge.
4. We need to know how much we are losing due to lack of policy in this regard. Normally life of OF cable is taken as 25 years. In India average cuts in cables on national network are varying 5 to 15 (depending on maintenance philosophy of each operator)/month/1000 Kms while in US, as per internet information it is around .25 to .5 cuts/year/1000 Kms (may be verified by department). Thus, life

of network is much less and maintenance cost is much high. Please check how much BBNL has laid since inception and how many Kms is being replaced. This will give a good lead to work out policy.

5. As per design of network 5G itself (future development may need more) will have 10 times nodes compared to 4G and planning says 5 are expected to be on radio and 5 on fiber.
6. I have collected some inputs which may help in reviewing and working out the Inclusive policy. The links are as under:

https://broadbandnow.com/report/chinas-fiber-broadband-approaches-nationwide-coverage/ -- Important points

Reasons For the Disparity

Despite the constant posturing and discussion about the importance of fiber, the U.S. has not been effective at deploying a nationwide fiber optical network. Why is this? Though there are many factors contributing to this trend, a few stick out as especially difficult obstacles:

Lack of private competition

Building out fiber networks at scale can often be an incredibly expensive process. Some estimates place the average cost of building out fiber to even a single home to be as much as $8,000. With hundreds of millions of addresses to serve, private telecom companies like AT&T, Verizon Fios and Spectrum have found it a difficult proposition to justify installing robust fiber networks, especially in less populous areas of the U.S.

Some rural communities have taken advantage of this opportunity by building out locally-funded municipal networks, despite several roadblocks in place across many states. The fact remains, however, that millions of Americans still have one or fewer options that even qualify as "broadband," much less a single fiber connection.

Inadequate Broadband Mapping

The federal government has for years relied primarily upon the FCC's Form 477 deployment data in order to form a mosaic of where robust service is and isn't in the country. One of the inherent issues with this data is that it allows for an internet provider to mark an entire "census block" (of which there are thousands per state) as covered if even as little as one home is actually serviced.

This lends itself to widespread misreporting of where service is actually available, especially in rural areas where census blocks can cover large distances and many homes. In turn, it can mislead policymakers and municipalities, decreasing the effectiveness of any funds allocated to broadband deployment in the process.

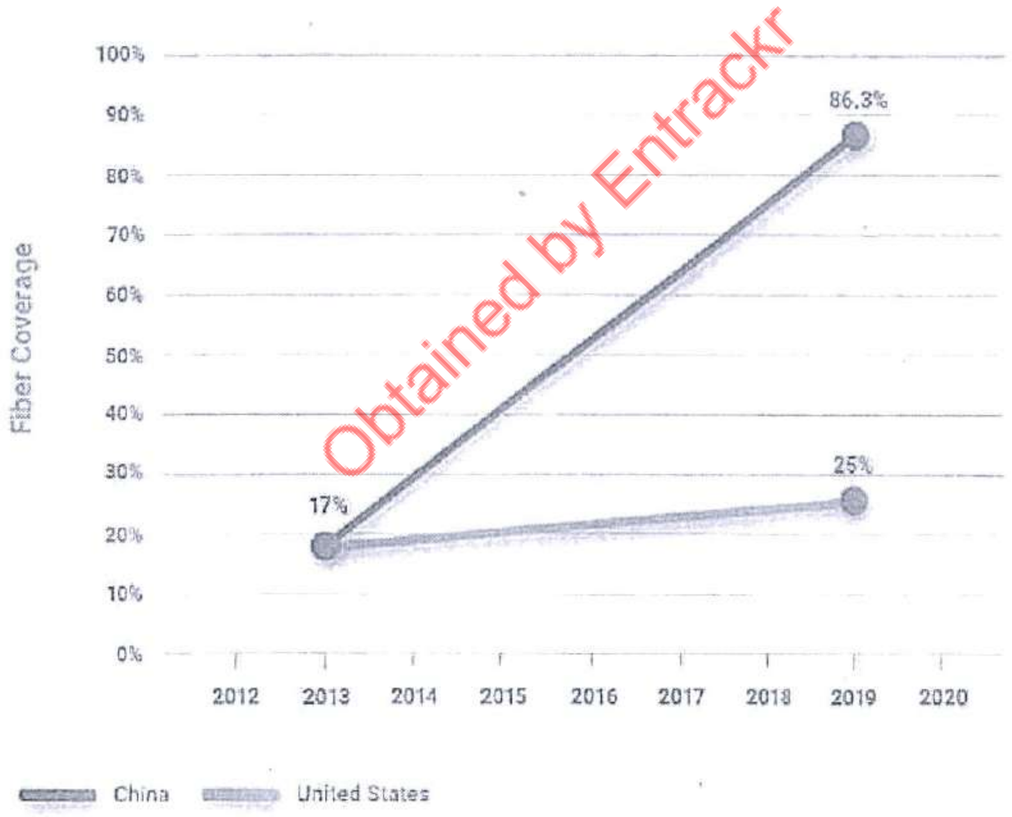
Inefficient national funding programs

Despite the fact that the United States government contributes hundreds of millions per year to closing the digital divide, it persists. There are many reasons for this, including the lack of accurate mapping described above, as well as less than ideal allocation of the funds in terms of areas of focus around the country.

Absence of common-sense state-level infrastructure policies

In some areas, common sense initiatives such as "dig once" that mandate conduit pipeline installment during roadway projects have allowed states to rapidly expand fiber footprints while also saving tremendous amounts of money in the process. In fact, we've previously estimated that nationwide fiber expansion costs could be reduced by $140 billion down to $14 billion in total if these dig once policies were the national standard. Despite this, most states have not implemented them or other cost-saving measures for fiber deployment.

Comparative rates of fiber expansion between China and the U.S.



BROADBANDNOW

https://www.mobileeurope.co.uk/ftth-council-europe-publishes-latest-fibre-penetration-figures/

Key milestone

This year[2], a key milestone has been reached, as FTTH/B Coverage in EU39 now amounts to more than half of total homes. By September 2020, EU39 reached a 52.5% coverage of FTTH/B networks while EU27+UK [3] sits at 43.8%, compared to respectively 49.9% and 39.4% in 2019. This shows a clear upward trend from the September 2015 figures when the coverage was at 39.8% in EU39 and 27.2% in EU27+UK.

The number of FTTH and FTTB subscribers in Europe increased by 16.6% in EU39 in the year since September 2019 with 81.9 million FTTH/B subscribers in September 2020. Russia still plays a major role in this increase, however, it is interesting to note that the EU27+UK experienced a 20.4% increase on its own.

This year, the country adding the most subscribers is located in Western Europe. France added 2.787.000 new FTTH/B subscriptions, whereas Russia came second adding 1.681.000 new FTTH/B subscribers. Spain rounds out the top 3 with 1.436.000 new FTTH/B subscribers. Other countries also experienced an outstanding increase in their number of subscribers such as Turkey (+ 718.000) and Germany (+ 694.000).

By September 2020, the EU39 FTTH/B take-up4 rate raised to 44.9% in comparison to the 43% [5] rate registered by September 2019. For the third consecutive year, the take-up rate for EU27+UK surpasses the EU39's one by reaching 46.9% (as opposed to 43.3% in September 2019).

Evolving tech

Fibre technologies have been continuously evolving during the last few years with a predominance of FTTH architecture over FTTB (63% vs 37%). Alternative internet service providers still make up the largest part of FTTH/B players, with a contribution of around 57% of the total fibre expansion.

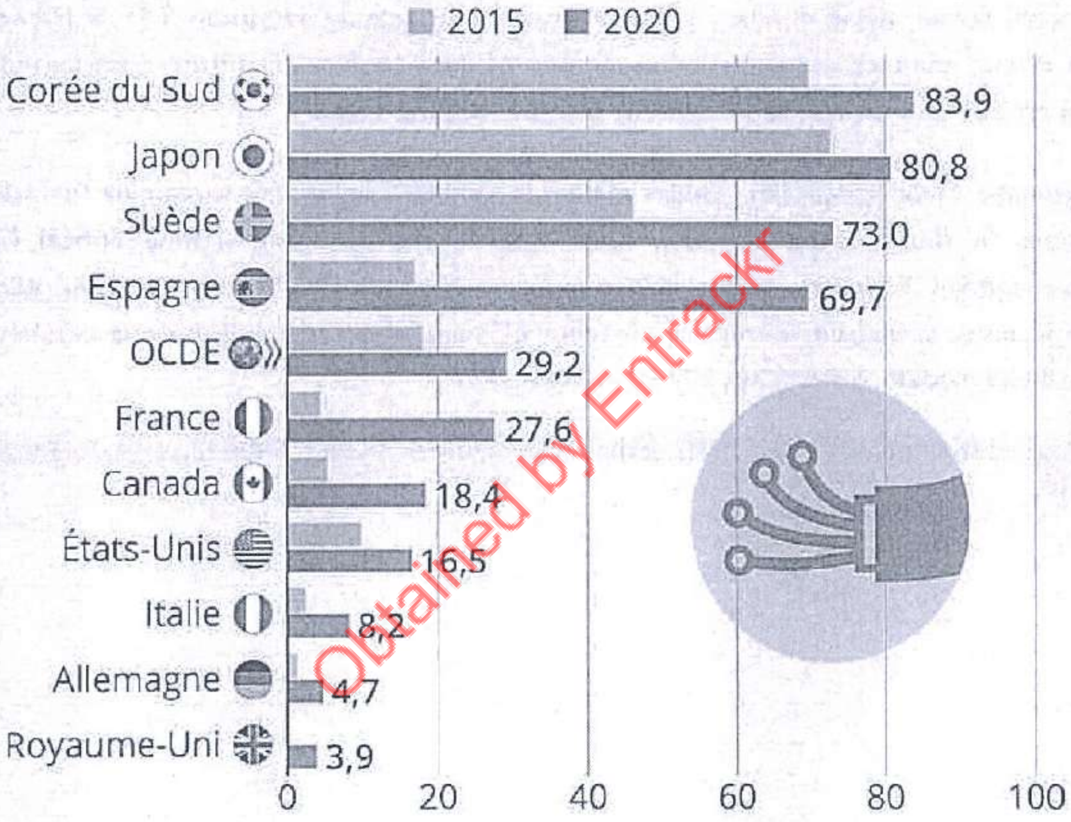
It is interesting to note that many countries where legacy infrastructure still dominates have modified their strategy deploying more FTTH solutions, migrating from existing copper-based and cable-based networks towards fibre and are even intensifying copper switch-off. Nevertheless, three historically copper-strong countries (UK, Germany and Italy) are accounting for almost 60% of homes left to be passed with fibre in the EU27+UK region.

The ongoing COVID-19 pandemic, in turn, has demonstrated the necessity of both FTTH deployments and adoption. The governments and local authorities are increasingly involved in the digital transformation, introducing revised national programmes, subsidies and relevant policy framework to promote fibre expansion.

https://cdn.statcdn.com/Infographic/images/normal/17226.jpeg

Fibre optique : quels pays sont les plus avancés ?

Part de la fibre optique dans le total des connexions Internet fixe haut débit, en %



Données de juin pour les années respectives. Sélection de pays de l'OCDE.
Source : OCDE

statista

https://www.techsciresearch.com/report/india-optical-fiber-cables-market/2091.html -- As per my understanding, this will change if policy is made for inclusive growth. This is the estimate of Industry as per present working.

India optical fiber cables (OFC) market stood at $ 881.5 million in 2019 and is projected to grow at a CAGR of 19.7% to reach $ 2.1 billion by 2024. Growth in the market is led by rising investments in OFC network infrastructure by the Indian government to increase internet penetration across the country, which is in line with government initiatives such as Smart Cities Vision and Digital India. Moreover, growing demand for OFC from IT & telecom sector, rising number of mobile devices, increasing adoption of FTTH (Fiber to the Home) connectivity and surging number of data centers are further anticipated to fuel optical fiber cables market in India over the coming years.

Regionally, India optical fiber cables market is gaining traction and expanding to various regions in the country. In 2018, West was at the forefront of India optical fiber cables market, however south region is anticipated to grow at the highest CAGR during the forecast period on account of presence of major IT players and growing number of small and medium enterprises (SMEs) in the region.

We need to study why we are far behind compared to other countries and how to grow faster.

Consultation paper - Dept of Telecommunications

From : appayyasastry@gmail.com Thu, Aug 25, 2022 10:38 AM

Subject : Consultation paper - Dept of Telecommunications

To : Naveen Kumar <naveen.kumar71@gov.in>

Dear sir/madam.
I am writing this in response to the consultation paper on "Need for a new legal framework governing telecommunication in India'.

I consider the telecom service providers who entered the business at 2G and 3G stage as the ones who can take the credit for telecom revolution in India. They are the ones who invested huge amounts of capital to bring broadband to the common man. The telecom service providers who entered the business at 4G stage have an advantage because they have no unused spectrum of 2G and 3G. I feel there is need to ensure level playing field among all the service providers.

In this connection, I feel that the service providers who have invested in 2G/3G spectrum need to be given some concessions. I suggest that the 2G/3G spectrum charges paid or due may be adjusted against 4G and 5G spectrum charges. This will enable ailing Telecom service providers like BSNL to compete with those who entered telecom business at 4G stage.

Sincerely,

APPAYYA SASTRY MARLA
Hyderabad.
25.08.2022
Phone: 9866462457.

[WARNING: ATTACHMENT UNSCANNED]Comment on Consultation Paper floated by Department of Telecommunications

From : Pankaj Garg <pankaj.garg@nic.in> Thu, Aug 25, 2022 12:18 PM

Subject : [WARNING: ATTACHMENT UNSCANNED]Comment on Consultation Paper floated by Department of Telecommunications 1 attachment

To : Naveen Kumar <naveen.kumar71@gov.in>

Cc : pankajgarg its <pankajgarg.its@gmail.com>

Dear Sir,

As advertised on the website of DOT please find comments on the consultation paper.

Regards

Pankaj Garg, ITS
9953440645

Azadi Ka
Amrit Mahotsav

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consultationpapercomments2508.docx
177 KB

Para wise comments on the consultation paper

Para 1: Mission "Antyodaya" was adopted in Union Budget 2017-18 and calls for a convergence and accountability framework aiming to bring optimum use and management of resources allocated by 27 Ministries/ Department of the Government of India under various programmes for the development of rural areas. The consultation paper nowhere talks about convergence with any department or Ministry. The crux of the paper suggests that at most an effort is being made to amalgamate The Indian Telegraph Act, 1885 and The Indian Wireless Telegraphy Act, 1933. It is therefore not clear as to how the Department of Telecommunications intends to strive towards the ideals of "Antyodaya". The opening paragraph talks about digital governance and people-centric delivery but the word "telegraph" when used with the widest amplitude means only communication and involves only transmission and reception of signals. The crucial limb is about the delivery of citizen-centric services and therefore must include "content", and this is completely missing in the entire paper. The missing limb of "content" can be appreciated from the fact that various departments of the Government of India and State Governments often work in "silos" and the system of one department or organisation is not able to interact with the systems of other organisations making the citizens running from one place to another. I feel that the new enabling Act should also talk about a "single source of truth" and this source of truth should be accessible to all authorised users of departments or organisations initially through API being used in manual mode and later they can be auto-populated. For instance, municipalities being the depository of date of birth should be able to provide this data to all the RTOs or Passport offices. This will make life much easier for citizens and has huge saving implications in terms of paper and therefore carbon saving potential. The new law should stress on Sustainable Development Goals and Green ICT. This is of paramount importance as all major industry now talk about the concept of "circular economy" for attaining targets set in sustainable development goals and this has also been recommended by ITU.

Para 2: The para should have included an idea about the department becoming an enabler for those who are "have nots". Covid indeed changed the way of the economy from manual to digital mode but the department should appreciate that the upcoming bill must act as an enabler for those who are not able to comprehend or afford the use of digital technology. It is an earnest duty of the State to take care of the elderly and others who are not familiar with the use of such technology. Bharat lives not only in metros but also in the remote hinterlands. We should not leave out our citizens who have limited access to such technology or have become infirm. Today citizens who are well educated but have become infirm due to old age also feel helpless in handling and managing technologies which appear to be simple for us but they find it daunting. The idea is that all should be connected. "Sabka Vikas Sabka Saath". Emphasis added on "Sabka"

Para 3: Matter of fact. However, it is not about what we have at present which has been served best by the present legal position, but what ought to be in future. The future is NOT "telegraph" but the future is ICT. The State must be visionary and a strategist and should be a step ahead of future developments and should not be seen as reactionary. I feel under the strong leadership of Hon'ble PM we should take steps to bring convergence. We should be looking not only for just telegraph but convergence as this is going to be a crucial link when the country might face rough waters in case of natural disasters or other such happenings. Telecom being a strategic sector, the role of ICT, AtmaNirbhar in ICT production is going to be a very crucial link.

Para 4: Matter of fact, hence no comments.

Para 5: It is true that telecommunication legislation has evolved over time in almost all jurisdictions. The entire paper only gives a very broad contours of what needs to be done as outlined in para 7 onwards but they are too broad and the gaps are too wide with the existing extant laws (which I will deal while commenting on those paragraphs). Please refer to Telecommunication Act of 1996 of USA, it has a very strong bearing for arbitration in case of a dispute. Further Singapore Telecommunication Act calls for promotion of effective and sustainable competition which inter-alia include:

(a) "removing or minimising any artificial form of impediment to market entry and exit;

(b) curtailing any concentration of Significant Market Power that has the effect of unreasonably restricting competition;

(c) eliminating anti-competitive behaviour by industry participants;

(d) ensuring that industry participants and consumers have easy access to information on market conditions; and

(e) ensuring that there is inter-operability and, where necessary, reasonable access to networks to prevent impediments to effective competition and market growth".

A very important aspect of this is promotion of facilities based competition such as having a **National Fiber Authority (Proof of concept attached as Annexure 1)** as envisaged in the Telecom policy as approved by Union cabinet. This means that wherever there are technological, market or other impediments that hampers the Licensee ability to deploy facilities the government should seek to strike a balance between economic incentive to deploy facilities and taking pro active measures to facilitate services based competition. It needs to be appreciated that India is a developing nation which should not allow its resources to be wasted by multiple efforts of different Licensee's to have a separate telecom infrastructure. Instead it should promote service based competition at least in areas which are not commercially viable and also high rise buildings where unscrupulous builders/RWAs enter into agreement with select vendor and thereby inhibiting competition. Then almost all the laws of Communication in different jurisdictions as cited in the draft consultation paper talk about convergence. The nation should be dynamic and looking for making its Acts which can stand the test of times for next 50 to 100 years giving stability of laws. There is absolutely no iota of doubt that in next few years the broadcasting services would be converged and we are already witnessing this from operators like Jio and Airtel. Then we have a same regulatory body i.e. TRAI. We should therefore take a step towards convergence of telecom and broadcasting. **This will lead to rationalization of human resources as well as save costs in terms of infrastructure requirement besides regulatory certainty.** Take for instance the case of interoperability of set top box for different service providers. The Act should act as an enabler for promoting such inter-operability as this would lead to reduced cost for the customer, saving resources of the nation, reducing plastic and e-wastes and promoting green and sustainable ICT practices. Another, very important aspect which the the new law must promote is making the telecom industry green and sustainable by making all the companies manufacturing cell phones, laptops etc. to have chargers and cords which are interoperable. The EU has already implemented the same by including cell phones, laptops and cameras. This is one of the most positive step taken by them towards making telecom industry green. The manufacturers initially resisted the new law but eventually have agreed to implement the same. There is no reason why we cannot adopt such a legislation in India.

Para 6: The new Act should actually talk about ICT Act instead of managing just telecom and spectrum. IoT is a concept which I feel would work well only with edge computing and would require setting up of server farms in Grade B and C towns and peri-urban areas and not just concentrate only in urban areas. This would require change in IT Act as well and making the entry level barrier very low so that new age entrepreneurs can take advantage of it and promote cloud infrastructure to those who are deprived of it. The Act should also provide for upskilling the human resource of India for taking advantage of the fruits of emerging new technology like Block Chain, 5G and IoT. Any attempt to exclude convergence and IT sector would be a half hearted attempt and would miss the larger consultation amongst the key players. The idea is to rationalize cost and have a single law for ICT and Broadcasting so that there is regulatory certainty. Even though the Government has not yet done it but the private operators have already converged their service and has actually gone a step ahead by converging even OTT platforms.

Para 7: It would have been better had the competent authority given a brief about the comparative laws existing in other countries and what India proposes to follow. It is really difficult to make a comment without knowing what the Government proposes to follow once the best practices and laws are reviewed.

Para 8: Besides comprehensibility of law it is the earnest duty that law is well publicized so that citizens of the country are aware of their rights and liabilities. Mere publishing in the Gazette is not the end of duty. In line with this the ACT should comprehensively deal with the issues of public grievance. There is an urgent need for a Telecom Ombudsman (concept note attached as Annexure II) who is part of the Government and the service providers are legally bound to follow the orders issued by it for redressal of grievance. Please appreciate that consumer laws are almost ineffective in case of telecom and broadcasting services as the amount involved is not much but if we aggregate them for each service provider it is a sort of revenue stream for them. Even the porting from post paid to pre paid has become very restrictive with lots of delays. Without treating customers as the kings we would be failing in our duties. It is true that licensee should be facilitated but the end goal is the customer. The market should not be allowed to become the king. It should be the customers who should be the king and not otherwise.

Para 9: It is a fact. The issue is what is the new Bill or Act? There is no denying that India needs a consolidated bill for all telecom and broadcasting services. With the coming of OTT and all major telecom service providers also providing OTT through apps and their set top box there is an urgent need to consolidate and converge. Is it not a fact that WPC wing of DOT is responsible for giving the spectrum required for broadcasting? To have ease of business we should be working towards giving one license for a broadcasting service instead of two which is the case presently. As of now Ministry of Information and Broadcasting is giving Grant of Permission and wireless operating license is being given by WPC wing of DOT which unnecessarily adds to bureaucratic delays. Similar is the case of radio services like AM and FM licenses. With the advent of technology and coming of social media channels and voice over apps like whatsapp, telegram and Signal, it will be naïve on our part to not have an enabling act/code/bill covering entire ICT and broadcasting space.

Para 10: The sincere endeavor of Government of India is to have ease of doing business and promote private investments. The private investments would be difficult to attract if we have multiplicity of bodies granting licenses and regulating them. Any law to be codified must be futuristic and all encompassing so that there is certainty of policies. Further, this requires more intensive focused group discussions and not just floating of consultation paper. India is a great country which is very diverse so one policy fits all will not be very successful. Hence consultation involving all stake holders State wise or LSA wise would definitely throw up interesting facts which if incorporated may lead to better outcomes. In this regard, comparative study of other jurisdictions before hand would also give better results.

Para 11: This goes without saying as the new Act cannot undo the existing licenses. Any change midway would lead to numerous legal issues.

Para 12: No comments to offer and same as Para 11

Para 13: Do we have separate entities who are specifically providing Right of Way? In case the same is being contemplated in the new Act, it would have been better if the contours are provided in the consultation paper so that detailed comments could have been provided. The Act should however, be an enabler for promoting sustainable telecom development and off course after applying the concept of circular economy so that precious natural resources could be efficiently utilized and recouped as well. The new act should promote sustainable development and resource efficiency by promoting sharing of active as well as passive resources. Use of AI and block chain technology could help in developing such platform and the new law can act as an enabler for the same. A right of way given to one service provider should allow other service providers to have a shared interest in common infrastructure. The case in point is that all OFCs are made from glass which in turn is made from sand. The carbon potential of coarse sand is 34.24 Kg CO_2/ ton while that of fine sand is 41.25 Kg CO_2/ton. This implies that if all service provider replicates the effort of laying OFC it would be a huge waste of natural resources of nation. The effort should be that the new law should be an enabler for sharing of infrastructure to have a reduced carbon footprint and reduced use of natural resources. The new law should be an enabler for such arrangements for which wider consultation is required which is more focused on particular theme/topic.

Para 14 to 16: Para 14 and Para 15 are opaque and what is being contemplated in the new Act is absolutely not clear. At best they are introduction paragraphs for Spectrum Management. Spectrum is a national resource and as per the directions of the Supreme Court which are treated as the law of the land ensures that the national resources must be utilized for the public good without any discrimination. I would rather suggest that spectrum management must include "white space" in the spectrum for effectively using them for broadband internet. To begin, having a repository of such "white space" is a first and foremost step. The Act should also provide that there is no hoarding of spectrum and the spectrum allocated is utilized efficiently. Further, one spectrum holder should not be allowed to have predatory pricing for any product so that the market forces determine the price for the end consumers and not the financial might of a particular corporation. In case there are only one or two major players in the market the effect might be detrimental in case of natural disaster or war etc. They will be easy and soft targets for the enemy countries to bring the entire nation to grinding halt. The Act should also promote Ham radio operators in a big way as they can play a very crucial role in case of natural disasters. Further, the Act should also promote satellite communication in a big way. That will also help in Atma Nirbhar Bharat as the economies of scale would bring down the prices of satellite phones and allow private space agencies to launch communication satellites. Not the least, the spectrum management should provide spectrum for civil aviation at a cheapest possible rate as India is witnessing a revolution in civil aviation sector. The number of passengers taking flights are increasing exponentially and with Hon'ble PM scheme of UDAN it is likely that number of passengers would further increase in a big way. Recently, USA has allowed whatsapp communication over text in all domestic flights and this has been well appreciated by the passengers on board since it has enriched the in-flight experience. India should also emulate the same and I am sure that Indians with an appetite for remaining connected, this can prove to be a money spinner for many airlines if the same is provided at an appropriate price point.

Para 17: In case spectrum is not being used the government may very well agree for the surrender of spectrum. It should incentivize the surrender by refunding on the money collected on prorate basis. However, sharing, trading or leasing of spectrum may lead to creation of third party rights and in case the parent company goes insolvent it will lead to protracted legal battle for release of spectrum. Further, any charges due to government on the sale of spectrum etc. makes Government of India only an operational creditor and its chances of recovering the money in case of insolvency becomes extremely poor. Hence, this aspect needs to be carefully considered as any impact on recovery of spectrum charges may lead to fiscal problems in future.

Para 18 & 19: The biggest issue being faced by all telecommunication service provider is the "Right of Way". Land being a State subject different States, municipalities, Cantonment Boards, Nagar Panchayats have dealt it in a different fashion. The draconian Forest Act and Wildlife Protection Act are most difficult to handle. Even central government agencies like railways and NHAI have not acted as enabler for promoting communication services. The agencies often look at a very narrow parochial view instead of taking a broad view of national interest and they are often guided by officers manning those agencies. The only solution is to make a provision in the Act which overrides all or any Act like Forest Act, NHAI Act and their rules or guidelines, so that Right of Way is deemed to be provided within one month of application to be made through a online mode. A fixed rate for specific Area be fixed and this rate should be indexed with some criteria such as inflation or indexation as provided by Income tax authorities for calculation of long term gain. This off course would mean that the Act should override many of the central as well as State Acts. Only then it would be a true enabler for spread of communication services.

Para 20: The Telecom Policy already approved by Union cabinet calls for setting up of National Fiber Authority which would provide for establishing common ducts and cable corridors. A detailed note on the need for establishing a National Fiber Authority was sent by me to the then Secretary Sh Anshu Prakash and then Joint Secretary Sh Hari Ranjan Rao. In case the same is needed I would be happy to resend it. However, with the recent cabinet decision of merger of BBNL with BSNL have made it slightly outdated but that can be taken care of by suitable modifications. In line with this the new Act should also allow floating of Telecom Infrastructure Bonds with sovereign guarantee so that the fund could be utilized for spread of internet in rural areas in a big way.

Para 21: Department of Telecommunications is the custodian of spectrum and hence simple information for merger, demerger and acquisition is not a good idea. As a custodian the

Department has an onerous task for protecting the revenue of government of India. Hence, it requires detailed examination. However, the process needs to be transparent and fast. Maybe a mandatory timeline of 60 or 90 days can be mentioned for a thorough examination of the proposal can be mentioned in the new Act. The Companies Act, 2013 do not examine the financial strength of the merged or demerged entities thoroughly. However, our license condition stipulates certain net worth of the company for grant of license and spectrum etc. Hence, a more dispassionate and legal view should be ascertained and mere information might lead to a situation where government may loose revenue. Hence we need to avoid this.

Para 22: This a very crucial aspect as all government dues including Income tax, GST etc. fall under the category of operational creditor. In a recent judgment the Hon'ble Supreme Court has held that the land allocated by Noida Authority to builders on credit does not entail them as financial creditor and in case of insolvency their rights are as good as of any operational creditor only. This landmark judgment has led to the authority suffering huge losses. Hence no provision of the Act can override such legal interpretation unless the Insolvency Act itself is amended, which is unlikely. Further, the Insolvency Act considers an entity undergoing Insolvency proceedings as a "going concern" and the management shifts to an Insolvency Resolution Professional (IRP). I wonder how can insolvency proceedings suo-motu can lead to suspension or termination of license. This is not permitted by law. The presumption that insolvency proceedings lead to suspension or termination of license is not a correct interpretation of law, irrespective of whether the services are being provided or not and also whether the license payment or spectrum charges are paid or not. The government dues entitle it to remain as operational creditor only and as the experience shows it is highly unlikely to get much relief under the Insolvency and Bankruptcy Code, 2016 as amended from time to time.

Para 23: Spectrum is an asset to which a value is assigned and this is how government goes for its auction. The value of a company also depends on the spectrum it carries. The value of spectrum has a bearing for any loan granted by financial institution. Hence, to say that spectrum can be excluded from insolvency proceedings is in my opinion legally not tenable.

Para 24: In the case of USOF any Fund collected does not remain with the USOF but instead goes into the consolidated fund of India. With the merger of BBNL in BSNL, USOF can be an enabler under the new law towards the formation of National Fiber Authority which should actually work towards sustainable telecom promoting the principles of circular economy. The said Authority should provide with an enabling common platform based on the lines of power exchange for the service providers to share their resources. The new law should allow the National Fiber Authority to raise funds from the market in the shape of bonds and provide long term capital gain incentive under Section 54 EC of the Income Tax Act. There is an absolute urgency that the country should use its resources judiciously and sharing of resources makes not only economic sense but also make the sector sustainable in long run.

Para 25: Penalties should be dealt under the Rules provision of the Act as it will be easy to modify them as per the need.

Para 26: The new law must have provisions promoting HAM radio in big way which could be game changer during any disaster. To promote such radio network entry of HAM operators should be facilitated by keeping the cost of equipment low and promoting local manufacturing of HAM equipment. It must also provide for cyber security for which again the issue of convergence is very important but somehow the consultation paper seems to be missing this limb.

Para 27: The statement as provided in the consultation paper is not adequate as it is silent on what kind of framework is being thought over.

Further deliberations:

- A very important aspect which needs to be brought under the new law is about legal interception of messages. While in the case of old telephone technologies it was easy to intercept them but new age technologies which provide voice as well as text over data channels like "Signal", "Telegram", "Whatsapp" and other social media site suitable mechanism needs to be incorporated in the new law so that legal interception of such messages could be made possible. The providers of the apps must provide enabling infrastructure for legal interception. With the advent of technology this is going to be a really tough challenge for the country and hence the new law should deal with the issue strictly in the interest of national security.
- The Act must be an enabler for setting up of standard laboratories for certifying the imported telecom goods for security clearances.
- The Act must be an enabler for settling of telecom related disputes through use of Alternate Dispute Resolution Mechanism and for customer complaints related to telecom and broadcast services setting up of Telecom Ombudsman is an absolute necessity.

Annexure 1

Concept Note

National Fiber Authority: Precursor to India's Sustainable Growth

A. Background:

The success of industry and its sustainability depends on major intervention viz. Technology, Innovation, Finance, Training, Marketing and personnel. The eco system for sustainable development of any country has linkages with policy framework so as to transform it towards Knowledge Economy. Throughout the human existence till date, it has faced a crisis of humungous proportions. In these difficult times it throws into the fore front sections of society who shoulder the responsibilities but were otherwise taken for granted or were less cherished. It was the vision of Hon'ble PM when the country launched "Digital India" in mission mode covering the entire gamut of India's growth path to development. The byproducts of this vision came as the only succor in the sweltering heat when the country faced lockdown due to the pandemic. Virtual connectivity was the only medium which kept, most if not all, the wheels of development moving.

Government of India has approved mission mode projects like "Digital India", the National Broadband Mission etc. These missions which are work in progress are impacting the whole gamut of the 17 Nos. of Sustainable Development Goals to transform the world. The National Digital Communications Policy 2018, unveiled in September 2018 has accorded optic fiber cables, the status of 'public utility' and lays much emphasis on the fiber-first initiative. As the country transforms itself into knowledge economy it will produce more data and at a much faster rate. This will require a strong fiber backbone along which can grow 5G technology. This essentially means that the country needs more of fiberisation and densification of fiber as the data load increases and latency declines in the new 5G era.

B: Country Context

India as a developing country has been confronted by various issues in the telecom infrastructure. The country has a low fiber penetration and less than 25% of telecom towers are fiber connected, a key infrastructure component essential to offer ultra high speed data services over next generation networks. The telecom sector plays an important role in the country's economy. The service providers are facing issues of low revenues making it difficult for them to raise money from market or financial institutions.

Under federal structure of governance in India, the responsibility for promotion and development of Telecom lies with Central Government. However, Central Government has allowed the State Governments to lay fibers in their areas of jurisdiction. As per the report of Microsoft, India will emerge as leading player in the virtual world by having more than 700 million internet users by 2025.

C. Sectoral and Institutional Context

At the institutional level, the country has 3 major telcos in private sector and few like BSNL, PGCIL, Railtel etc. within the the public sector. The total fiber laid in the country is around 22 lakh Km. Today, at 10 gigabytes per subscriber per month, India boasts of the highest data usage. Yet, India has only 18 million of the >1 billion global wired broadband subscribers. Of these, 10 million access internet on lower speed co-axial copper cables. As for FTTH penetration, India's presence is even weaker, with only 1.3 million FTTH households. A clear gap exists between the visible consumer demand and fragile supply of fixed broadband FTTH services. OTT players have forced traditional media and broadcasting companies to revisit some of their core business assumptions. KPMG's India Digital Future Report 2018, expects the native digital segment to shift from passive consumption to deeper engagement. They estimate 425 million to be wireless broadband customers, and over 100 million households to be highly engaged digital users. These 'Digital Enthusiasts' are more likely to pay for wired and wireless broadband services and OTT content. Thus, the present usage of 10 gigabytes per subscriber per month will exponentially increase to 200 gigabytes of usage. Globally, fixed broadband generate 85 Exabyte per month and India's trend would be no different.

D. Present Scenario:

While there is no doubt about the insatiable hunger of data in India as witnessed by spread of broadband and OTT services but the success of FTTH remains clouded. One of the major reason for thin fiber density is that every operator is forced to lay its own cable which makes it prohibitively expensive for laying and maintaining it. As per the E&Y study, India's construction cost to reach a FTTH household is among the highest in the world at $1,580, i.e., 1,15,000, against $200 in China, $307 in Thailand, $334 in Indonesia, and $432 in Malaysia. The reasons for high FTTH rollout cost in India include exorbitant cost of RoW, high lead time for approval, uncooperative building societies, unorganised/expensive fiber construction services, high fiber maintenance cost, etc. Studies in the countries with developed infrastructure shows that mobile and fixed services are complementary to each other. The users continue to use mobile data for short bursts but for content viewing over OTT or Television of 3 to 4 hours the preferred mode is FTTH. The model where every operator functions in silos will lead to a stunted and restricted spatial growth only and the revenue from wireline broadband will continue remain a pipedream.

E. Way Forward:

Key to home broadband market success is availability of fiber infrastructure that can encourage multiple players to serve this large FTTH market. The only possible model is by replicating the mobility infrastructure model of pooled common resources instead of a fragmented one. Until the birth of telecom infrastructure providers in the form of independent tower companies like Indus and ATC, India's mobility voice presence was limited. This reduced the entry barrier for telecom players enabling quick expansion of coverage through shared infrastructure without individual operators having to bear the capex burden of setting up their own towers. As a result, the telecom market expanded at an exponential pace between 2008 and 2015.

By converging multiple fiber-based networks onto a shared network, financed by USO Fund, this 'National Fiber Infrastructure' can ensure fiber availability across the country. The need is for DoT to formulate regulatory policies to support growth of an independent fiber infrastructure Authority. The challenge is to get multiple tenancies so that the infrastructure cost can be spread over a large number of operators. The Regulatory framework for National Fiber Authority will give the necessary push to central, state and municipal legislation to equate fiber deployment with infrastructure utility status. The National Building Code of India could be amended to make telecom installations and associated cabling mandatory for all commercial and residential buildings. A National Fiber Authority can oversee setting up of common service ducts and utility corridors in all cities, apart from collaboration between states, the Centre and the Urban Local Bodies.

Indian consumers are anxious to become part of the global FTTH revolution. With India's current fixed broadband business operating model, the gap between FTTH demand and supply will only widen unless a new collaborative, partnership-driven, low-cost business model and market structure become a reality. The government and regulator following the 'National Digital Communication Policy' vision will encourage FTTH services.

The National Fiber Authority can provide a digital platform for the purpose of accounting on the lines of Power Exchange and provide Policy framework to act as a facilitator for sustainable eco-system development. It needs to be appreciated that futuristic Telecom policy should lean towards Green telecom which is sustainable and deploy the concept of circular economy. The concept of circular economy in the telecom sector has also been espoused by ITU in its concept paper. The production of OFC needs glass which in turn is dependent on sand. The carbon potential of sand varies from 34 to 42 Kg CO_2 per ton of sand. Further, the exploitation of sand also leads to natural degradation of river and sea shores leading to floods. Hence, the effort should be to made our practices sustainable. By having shared active and passive resources, the cost of installation would be greatly reduced and the competition in the sector would mainly be customer centric. The idea would be to encourage the service providers to share the network and not coerce them. This would reduce the time delays for spread of infrastructure by way of reduced efforts for getting RoW. The establishment of National Fiber Authority shall send a strong message, that Government of India gives huge emphasis on Digital Connectivity similar to road connectivity. As the road Connectivity has tremendously improved the movement of goods and has proved to be lifeline of a young nation the Digital connectivity will play a lead role in transforming India into a Knowledge economy. The Authority can play a neutral role by enabling provisioning of dark fiber to the service providers for spread of service in urban as well as rural hinterland of the country so that fruits of development are evenly spread. The Authority shall provide an impetus to infrastructure push in Telecom and IT for furtherance of eschewed goals of Telecom Policy unveiled in 2018.

The Networks of future would be providing solutions in terms of Virtualisation. Transport layer which can be fiber is required in addition to software. India would therefore, leapfrog in new technology adoption such as Edge computing, Artificial Intelligence and Machine Learning. Once the large swathe of population is covered by shared fiberisation, the service providers will in due course of time provide increased point of presence for providing next generation technology based services.

The Gram Panchayats are at the cusp of new phase of governance. The Fifteenth Finance Commission in its report for 2020-21 has pointed out that timely availability of audited accounts – separately at the local body level and jointly at the State and all-India level -- as a critical reform agenda. It has recommended that upgraded PRIAsoft needs to be integrated with Integrated Financial Management Information System (IFMIS) of the State Governments and the Public Financial Management System (PFMS) of the Controller General of Accounts. The bottom-up pressure from the people demanding efficient delivery of public goods is increasing on the State executive. It can be effectively met only with deeper decentralization. The digital penetration and connectivity in rural areas is reducing the rural-urban information gap and pushing the administration at the local level to function in an effective way. The Authority by providing fiber to the service providers will play an active role in reducing the digital divide.

With the opening up of new frontiers in agriculture by removing the boundaries of Mandis, the rural connectivity is needed the most by the farmers to sell their produce at the best rates. Thus, while fiber will be at the transport layer the application software development as per the local needs would open new vistas in the in the field of process development which will inter-alia include process design, improvement of production technology and consultancy. The large scale urbanization and migration of young and old to the already overcrowded cities can see a trend of reverse migration as witnessed by IT companies during the pandemic when the employees were forced to work from home and no significant drop in productivity was observed by IT and ITeS companies.

Setting up of Cloud Infrastructure is the natural corollary to be set up exclusively for the Indian MSME sector. The MSME sector of India which contributes to more than 29% of GDP and 49% of Indian export shall be greatly benefitted in terms of better connectivity and reduced dependence on Hardware and Software procurement/upgradation.

The telecom sector which has been the toast of India's success story is off late facing rough waters and is facing difficulty in expanding its fiber foot print due to high cost of laying, maintenance, lower return of revenue and above all securing Right of Way. The Authority will provide a much needed respite to the telecom industry by adopting different models of fiber sharing. BSNL at one point of time can be asked to be part of the Authority and this would also allow to monetize its assets. The telecom industry cannot afford to have their captive fiber as it leads to national wastage and at times price war in order to gain more customers.

Therefore, in order to improve the financial health of the telecom sector, it is necessary that quality infrastructure in terms of fiber is made available to them at reasonable costs by setting up an Authority in public sector. With a view to foster the growth of the fiber in the country, Government of India through BSNL has already laid lakhs of KMs of OFC and this can be the seed around which future fiberisation and densification can be undertaken. A transparent mechanism for leasing out of fiber to all the players in neutral way will lead to saving of huge national resources.

While the present scenario appears comfortable as far as landing of submarine cables is there but in the long run when the demand for data is bound to leap frog due to IoT, OTT services etc. the present system will find itself insufficient to handle the exponential growth of data despite caching of data at local level. Further, the present system was designed to lease bandwidth spaces and is completely inadequate in case intercontinental dark fiber is needed for lease. Also, the Eastern border of India is almost bereft of any landing station except the one coming at Digha. In case of a natural or man made disaster the country will be almost completely cut off from the world. The Eastern Sector can be used to have more of terrestrial link with neighbouring countries which can then be leveraged to have fiber connectivity on ring with SAARC and ASEAN countries extending to Africa, thereby opening a new chapter of Digital Diplomacy.

Considering that useful service shall be rendered by the National Fiber Authority, it is imperative that fiber of BSNL is monetized by opening it up for sharing the passive and active infrastructure through the Telecom exchange platform designed by the Authority. The estimated cost for fiberisation upto Village level with only linear model comes to around 100000 crores. With the USO Fund availability of Rs 50,000 crores, the Authority will have to additionally raise another 50,000 crores. This can be raised by approaching international lending organization for long term loan from World Bank or JICA or ADB. Further, the Authority would approach Ministry of Finance to allow raising of funds through Long Term Capital Bond under section 54EC of Income Tax Act. The maintenance of fiber will be done by internal accruals by leasing of fiber to various service providers.

F. Development Objectives of National Fiber Authority:

- Minimum 80% of fiberisation of mobile towers
- Increase in Densification of fiber not only in cities but upto village level
- Securing Eastern border with more landing sites

- Upgrading the existing international interconnectivity with the option of fiber lease
- Having more terrestrial link with India's neighbours
- International Diplomacy by being nodal point for developing Digital Highway for SAARC country and extending it to ASEAN countries and Africa
- Legislative framework for reducing the cost of Right of Way and time bound approvals
- Having different models like involvement of States, PPP etc. for having integrated approach for development of fiber network
- Fair pricing regulatory framework for sharing of fiber infrastructure
- Using Innovative Business models like those of CSC and VLEs for project execution, maintenance, content development etc. leading to huge employment generation
- Facilitating Cloud Services by roping in ITI and TCIL specifically for MSMEs

Annexure 2

Ombudsman for Telecom Sector

Introduction

India is the world's second-largest telecommunications market, with around 1.186 billion subscribers as of June 2019. The telecom market can be split into three segments – wireless, wireline and internet services. The wireless market segment comprises of 98.17 per cent of the total subscriber base, as of March 2019. With this huge numbers equally daunting is the task of redressal of telecom consumer grievance. As per the report published in "The Economic Times" on 17th February, 2019 under the title *"Not yet apprised of governments decision on telecom ombudsman: TRAI to DoT"* around 10 million complaints related to telecom issues are received every quarter. The fate of these complaints are best summarized in the following paragraph from the above article *"Telecom grievances mechanism till date has largely remained within control of the service providers. Under present norms, telecom subscribers can register a complaint with the call centre of their service provider. It can be escalated to the nodal officer of the telecom operator in case the complaint is not resolved, and thereafter the appellate authority set-up by the service provider. In most of the cases, specially billing disputes, consumers complain of getting no relief at the various levels. The complaints thus remain limited between the subscriber and the telecom company"*

Background:

The issue of redressal of telecom related grievance have found the concerns of the authorities both in Department of Telecommunications as well as TRAI from time to time and different set of solutions were considered. While Department of Telecommunications (DOT) was mulling the options for handling such huge number of complaints, Telecom Regulatory Authority (TRAI) suo-motu issued a consultation paper on "Complaints/Grievance Redressal in the Telecom Sector in 28th July, 2016. After consultation with all the stakeholders TRAI made the following recommendations for establishing a three stage redressal mechanism:

"1. Resolution by Telecom Service Provider
2. Resolution by Consumer Grievance Redressal Forum
3. Determination by Telecom Ombudsman"

The recommendations of TRAI were deliberated upon in Department of Telecommunications. The Telecom Commission in its meeting held on 01.05.2018 approved a modified strategy which inter-alia called for establishing a two tier structure for Complaints/Grievance Redressal in Telecom Sector. In brief Tier 1 through the respective Telecom Service Provider (TSP) and Tier 2 through determination by Telecom Ombudsman.

NDCP 2018 also lays emphasis on......

> ***1.5 Ensuring Customer Satisfaction, Quality of Service and effective Grievance Redressal***
> *(a) Establishing effective institutional mechanisms to protect consumers' interests including:*
>
> > *i. Telecom Ombudsman*
> > *ii. A centralised web based complaint redressal system*

Analysis: legal context, volume & peculiarity, domain knowledge requirement, efficiency of grievance resolution (ease of filing, ease of resolution mechanism), Justification for ADR/ Ombudsman

Current Position of Law: The Central Government has notified "The Consumer Protection Act, 2019" on 9th August, 2019 which inter-alia provides for protection of the interests of consumers and for the said purpose, to establish authorities for timely and effective administration and settlement of consumers' disputes and for matters connected therewith or incidental thereto. In the definition clause 2(42) of the said Act the word "Service" has been defined to mean service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.

By bringing Telecom services under the jurisdiction of Consumer Protection Act, the scope of consumer protection act has been widened, which was not there prior to 9th August, 2019.

Volume & peculiarity, domain knowledge requirement, efficiency of grievance resolution (ease of filing, ease of resolution mechanism):

- Mostly complaints are low value, high volume; felt in a impulse, if formal court type approach adopted, most of the complaint may die down at the inception itself
- Information required to resolve/ investigate complaints are computer system generated electronic records; more suitable to be understood by person familiar with the telecom systems.
- To verify commission/ omission of any event, system/data mining is required, for which domain expert is required.

Analysis & Justification for Alternate Dispute Redressal Mechanism for Telecom Consumers under Department of Telecommunications:

The central government has allowed the jurisdiction of consumer courts in the consumer protection act of 2019 which was hitherto unavailable but the ground situation needs to be considered with regards to pendency of cases in the consumer forums and the average time for disposal of cases. The data as per the website of National Consumer Disputes Redressal Commission indicate pendency of 323163 cases in district forums, 118319 cases pending in State Commissions and 20304 cases pending in National Commission as on 30.06.2019. No official data is available for time taken in disposal of the cases but the unofficial channels and independent survey indicates 3 to 5 years and cost of litigation from 2 to 3 lakhs. The filing of complaint/ grievance with consumer courts were envisaged to be informal, and to be redressed in three to six months period, but over the years it has become very formalised, requiring different sets of affidavits and all at the discretion of the presiding officer which keep on changing frequently with times. This has led to the need for hiring a trained lawyer for seeking relief in consumer forums. The idea of setting these courts was to provide a forum to consumers without the cumbersome processes and technicalities of a civil court. Another aspect which adds to delay, is that of vacancy in the roster which lead to long adjournments.

The consumer forums may therefore find themselves to be ill-equipped in dealing with consumer complaints of telecom sector which are in the range of millions, if not millions in ten of thousands if even 10 percent of telecom grievance convert into litigations leading to further choking of already choked consumer forums. Further, the monetary value of the grievance is too low for even the most daring person to resort to litigation. This confusion is what allows the TSPs to have an advantage over the telecom consumer where they are aware that the consumer do not have an equal footing when dealing with their deficiencies or billing disputes.

Conclusion & Way forward:

If we look at the recommendations of TRAI and the decision of the Telecom Commission dated 01.05.2018 the intent of the regulatory body as well as the department (knowing well that the telecom services are going to be included in Consumer Protection Act, as Draft Bill was already published by then) is clear that there is a need for an separate/ independent mechanism to deal with the consumer complaints related to telecom sector, where the volumes are high and stakes involved are low. TRAI Act clearly mentions that TRAI will hear complaints only from "group" of customers, not individual complaint. Legislative intent was to keep individual complaints with consumer forums.

Since the volume of complaints is very high and is cutting across all the Telecom and Internet Service Provider, it is proposed for establishing an office of Ombudsman. TEC is the nodal agency for developing standards for telecom equipment and network elements in the country and is suitably placed for developing and standardising the complaint redressal mechanism in the sector for enhanced customer satisfaction.

In order to provide convenient grievance redressal mechanism, it is proposed that the entire system of Ombudsman so developed shall be in "online mode" and shall begin by developing a centralised software for complaint redressal mechanism from those complainants who are not satisfied with the disposal of their complaints by their TSP. Such online models already exist in UK and Australia, and the model of telecom ombudsman in India will be a step in right direction as far as handling of telecom complaint is concerned. The software so developed will have an inbuilt mechanism which can be accessed by public, all TSP as well as officials of Ombudsman for redressal. Similar model is already existing and successful in India wherein banking ombudsman has been providing relief to banking customers. The licence condition can be suitably amended to give teeth to the office of Ombudsman, who shall pass an order on the basis of mutual agreement and mediation after following the principles of natural justice, the orders of which will be binding on both the parties. Telecom service has already found its feet in the newly enacted consumer protection act on advice of the Department of Telecommunication, any person or service provider not satisfied with the award of ombudsman can approach consumer forums for further relief on judicial side.

Proposed framework

Type of complaint that will be entertained by Telecom Ombudsman:

<< To be expanded w.r.t. new age services/App >>

A. **Mobile Number Portability**

  I. Non generation of UPC
  II. Rejection of Porting request without valid grounds
  III. Non-porting within the specified period

B. **VAS/UCC**

  I. Activation of VAS services without explicit consent
  II. Inaction on UCC related complaints

C. **Broadband Speed**

  I. Contracted Speed in Wired Broadband Services.

D. **Billing Related Complaints**

  I. Excess/ Inaccurate billing.
  II. Billing post termination of service or beyond period for disconnection of service
  III. Wrong application of tariff
  IV. Delay in activation of tariff cutters/packs
  V. Change in Tariff Plan without Consent
  VI. Denial of Migration or levy of migration charge
  VII. Non-refund of Security Deposit within specified time limit

E. **Fault Repair**

  I. Failure to Repair faults within the specified time limits
  II. Provision of Rent Rebates for fault repair beyond specified time limits

F. **Connection/ Disconnection of Services**

  I. Subscriber verification within time
  II. Activation of services within time on successful completion of subscriber verification
  III. Refusal to accept request for disconnection of service
  IV. Non-disconnection within the prescribed time limit

G. Sale/ rent of International SIM/ Data/ Calling Cards

  I. All disputes relating to sale/ rent/ use of International SIM / Data/ Calling Cards, which are being sold/ rented by companies that have been issued NOC by DoT.

H. The way Services has been sold.

Note: This is indicative list and may be amended by DoT/ Ombudsman, as and when required

Type of complaint that will not be entertained by Telecom Ombudsman

A. Grievances in the nature of perceptions, policy issues, administrative matters etc.

B. Any service requirement or parameter that has to be met by the service provider for network as a whole, geographical area and not on individual subscriber wise [e.g.: call drop, low or inconsistent data speeds in relation to an individual subscriber location in wireless service etc.]

C. Unsubstantiated or non-verified offers made by retailers. However, service providers will be responsible for recharges/payments of bills made through their channel partners appointed by them as guidelines/regulations laid down by the TRAI/DoT from time to time.

D. Disputes relating third party payment made using sources provided by service providers [like Credit card payments, airline booking, service provider transfers etc.],

E. Email frauds, Tower Frauds, Phishing etc.

F. If a complaint pertains to the same subject matter for which any proceedings before any court, authority or any other forum is pending or a decree, award or a final order has already been passed by any competent court, authority or forum or is prima facie frivolous or vexatious in nature, such a complaint should also be excluded.

The onus of establishing that his grievance falls under the qualified category of complaints shall be on the individual consumer. Department of Telecom shall have power to change the type of complaints that will be entertained by Telecom ombudsman from time to time.

Email **Naveen Kumar**

Comments on New legal framework governing Telecommunication in India

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From : nishukhokhar111@gmail.com Mon, Aug 29, 2022 04:11 PM

Subject : Comments on New legal framework governing Telecommunication in India 1 attachment

To : Naveen Kumar <naveen.kumar71@gov.in>, Shri Ashwini Vaishnaw <moc-office@gov.in>, K Rajaraman <secy-dot@nic.in>

Dear Sir,
I have given some suggestions on your consultation paper on DoT website for New legal framework governing Telecommunication in India. Kindly find the attached document. As per vision of our PM Modiji, India must repeal all colonial era laws and Indian Telegraph Act, 1885 is one such act.
Only then independence in true sense can be achieved. Hoping my comments would help GoI in formulating a new act.

Regards,
Nishu Khokhar
A Responsible citizen

Comments _new legal framework governing Telecommunication in India.docx
20 KB

Subject: Inviting comments on the Consultation Paper on 'Need for a new legal framework governing Telecommunication in India'

As a responsible citizen my comments to improve the legal framework are following:

1. The ITA, 1885 is old and archaic and was enacted by the British. At that time telegraph was being used as major form of communication. The current act is more than 100 years old, it is not in conformance with current technical evolution. Punishment in many crimes under this act is like 1-year jail term and 100 rs fine which is hardly a deterrent for the criminals, further it has no provision to protect the rights of citizens.
2. At present India has leaped towards from 1G of mobile communication to 5G and the act remains related to the telegraphs. The current act still contains provisions of laying telegraph which has been discontinued long back in the country. The current act doesn't have provisions related to recent technologies in digital communication domain such as Internet, 4G, 5G, Mobile apps, websites/portals, OTT services, cloud services, hosting and VPN/VPS services. The absence of recent technological terms in the act makes it unfit for this era and future eras.
3. With the advent of new digital techniques and financial services with digital domain the frauds are rising exponentially in the country. India needs a new act to secure its digital communication sector. As telecom/digital communication is the backbone for all ICT services in the country, a robust, comprehensive act to deal with current problems is need of the hour.
4. Because of necessary provisions in the current act, LEAs find it very difficult to deal with the fraudsters/ criminals. Moreover, in this digital era, many physical, financial crimes and terrorist acts involves communication in some form. Therefore, there is a need of enhancing powers of Ministry of communication in line with **Federal Communications Commission of USA which has LEA powers. GoI must bring a new act to grant LEA powers to expert department under Ministry of Communication because at present LEAs in India don't possess necessary technical capability in handling cases related to Digital communication. All LEAs in India right now are struggling with such cases and conviction is very rare.**
5. **Income tax dept has been given interception/search/seizure powers elaborately in Income tax act 1962, primarily in the interest of Economic Security of the Nation. Since Grey Market activities may not only threaten economic security but also has direct National security imperatives, the proposed New Telecom Act may consider empowering DoT units similar to Income tax/Customs acts etc. The current penalty amount mentioned in the ITA, 1885 may also be suitably revised to reflect the current context.**
6. With the launch of 5G technology in the country and other services such as IoT, M2M communications, AI, connected drones etc. new security challenges will emerge on a large scale. These technologies if misused has great potential to endanger national security, financial and political stability.
7. India needs to protect its **'Digital Sovereignty'** in this borderless world of digital communication by bringing new act which will have provisions to regulate OTT platforms

and Big tech companies such as Google, Facebook, Youtube, other social media platforms etc. The big tech companies registered outside India, hosts its servers outside India and have about 50 Cr users in the country. With this huge amount of user base, these big tech companies possess a digital power to intervene in Indian electoral process, affect political and domestic affairs, international relations with friendly countries, financial stability etc. This kind of phenomenon has been observed in recent war between Ukraine and Russia wherein many such companies unilaterally boycotted Russia and stop providing services to Russia citizens.

8. To sum up, if India aspires to become a 5 trillion economy, we need a new communication Act which shall have provisions for ease of **doing business, protecting rights and data of citizens, protecting Digital Sovereignty of the country, enhancing security of communication sector, providing LEAs powers to experts in the sector.**

9. Some suggestions for the new act are given below:
   Some definitions need to be included/changed:
   - **Communication:** any transmission, emission or reception of signs, signals, symbols (analog & binary, tertiary and so on), codes, text, images, videos of any nature by wired, wireless, visual, optical, electromagnetic system, device or any other such methods. It includes machine to machine, machine to device, machine to human, web portals, applications (mobile and web), IoT and any futuristic form of communications.
   - **Communication system:** Any equipment physical or virtual including its source code, machine programming languages capable of performing any activity mentioned in the definition of communication. It includes any such equipment, channel/medium (wired, wireless, optical or any other such medium), network, network elements etc.
   - **Communications Network:** means any combination of communications systems.
   - **Communications Services:** means any communications provided through communications systems and communications networks, singularly or in combination.
   - **Communications Resources:** means Communications, Communications Systems, Communications Network or Communications Services, singularly or in combination.
   - **Over the top (OTT) services:** Any service which uses communication infrastructure as an underlying medium. It includes social media platforms, mobile & web applications, video streaming platforms/portals, Voice telephony (VoIP), messages (SMS), Video calls, and Instant messaging service, online news portals and any other such service.
   - **Service provider/ Communication Service Provider:** Any person/entity/organization which facilitates the citizens with the services in any form of communications, including Telecommunications, Satellite, Internet, OTT, Fax, Messenger, Application (mobile & web), Cloud storage/services, hosting services, content services, OTT, VPN and any other form of existing or futuristic

communication service. Any such Service Provider shall, hereinafter, be called as Communication Service Provider.

- **Unauthorized Communications:** Establishing/ trying to establish communications by means of scanning/ penetrating/ extorting/ stealing/ defrauding/ impersonating/ eavesdropping/ malicious or fraudulent or backdoor entry in communications, communications systems, communications networks or communications services/ hiding identity maliciously/ malicious use or overuse of communications resources or any other such use of communications, communications systems, communications networks or communications services that is not permitted under the law.

Some powers may be enhanced:

5. Power to make rules for the conduct of communications resources:

(1) The central government may, from time to time, by notification in the Official Gazette, make rules consistent with this Act for the conduct of all or any communications resource established, maintained or worked by the Government or by persons licensed under this act.

(2) Rules under this section may provide for all or any of the following, among other matters, that is to say:-

a. The conditions and restrictions subject to which, communications resources shall be established, maintained and worked [within India];

b. The conditions and restrictions subject to which, Telecom Services Provider (TSP), Internet Service Provider (ISP), Other Service Providers (OSP), Over the Top (OTT) Service Providers, Mobile and Web Applications Service Providers, Cloud Service Providers, hosting service providers, content service providers, Social Media Service Providers, VPN or other Encryption Service Providers, and any other Communications Service Providers shall establish, maintain and work communications resources [within India];

c. The precautions to be taken for preventing the improper interception, usage, surveillance, monitoring, blocking, collection, storage, transfer, shift, suspension, disconnection or disclosure of communications;

d. The period for which, and the conditions subject to which, communications resources and other resources belonging to, shall be preserved by the Government or by persons licensed under this act.

e. The conditions and restrictions subject to which any communications, communications services, communications systems, communications network and any other communications resource shall be established, maintained, worked, repaired, blocked, suspended, preserved, transferred, shifted, withdrawn or disconnected;

(3) The conditions and restrictions subject to which any anonymous, encrypted, proxy, VPN, TOR or other such communications shall be established maintained, worked [within India];

Some Offences & Penalties may be as under:

1. any person or organization whether Indian or foreigner from within or outside India whosoever cause or tries to cause financial harm to any person/organization/entity in any from using any communication resources or services including mobile calls, e-mail, SMS, VOIP calls, fraudulent portal/websites & applications, unauthorized accessing user's account, impersonating, he shall be punished, with imprisonment which may extend to three years, or with fine, or with both, and, in any other case, with a fine which may extend to 10 lakh rupees or equivalent to financial loss incurred to the victim.

2. Any person or organization whether Indian or foreigner from within or outside India whosoever involves himself in unauthorized communication for which he has not been authorized to do so with an intention to cause harm, shall be punishable under this section with an imprisonment which may extend upto three years or fine upto 10 lakh rupees or both.

3. Power to take communication forensics from any communication system through which unauthorized communication has taken place or which has been the victim of such communication

4. Any person/organization whether Indian or foreigner from within or outside India whosoever involves himself in activities such as large scale incitement of masses by using social media platforms, web/app portals, websites, fake news and any other form of communications, deliberate disruption of communication services in India, creating fear among the masses, spreading, launch large scale attacks on Indian communications and other critical infrastructure, or any other such act which may cause harm to the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order shall be held guilty of communication terrorism and shall be punishable under this section with life imprisonment and a fine which may extend upto 10 lakh rupees.

5. Any communication service provider based in or outside India whosoever is providing services in India (either paid or free) shall be bound to follow the rules notified under section 5 of this act, in case he fails to do so he shall be punishable under this section with imprisonment for a term which may extend to two years or with fine which may extend to one crore rupees or with both.

6. Any communication service provider based in or outside India whosoever is providing services in India (either paid or free) shall be bound to follow net neutrality and provide unbiased platforms and services to all people within India, if he discriminates against any individual/organization on the basis of ideology, caste, creed, gender, region, class etc. he shall be punishable under this section with imprisonment for a term which may extend to two years or with fine which may extend to one crore rupees or with both.

The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

Suggestions for Communications Security:

1. Power to investigate the crimes perpetrated using communication services, systems and networks:-National Digital Intelligence Agency (NDIA)

(1) The Central Government shall, by notification in the Official Gazette, appoint an agency of the Government to be called the National Digital Intelligence Agency comprising of experts from communication and communication security;

(2) The Central Government shall provide the agency referred to in sub-section (1) with a Director General and such other officers and employees as may be prescribed;

(3) The salary and allowances and terms and conditions of the Director-General and other officers and employees shall be such as may be prescribed;

(4) National Digital Intelligence Agency shall serve as the nodal National agency for performing the following functions in the area of Communications' fraud, offences, data theft, security breach, communication terrorism, –

i. Power to investigate such incidents as above

ii. Collecting and analysing the forensics from any communication system involved/victim of Communications' fraud, offences, security breach, communication terrorism in the country etc.;

iii. Investigation of offences wherein only machines are involved

iv. Power to file FIR (First information report) against the offenders, power to search interception, seizure of infrastructure involved in such illegal activities ;

v. Coordination with other agencies for investigation of communication offences, frauds, terrorism related offences etc.

(5) To fulfil the objectives cited in subsection (4) and Research & Development, analysis and any other required function, the Central Government shall set up a **National Communications Forensics Centre (NCFC)**;

(6) The manner of performing functions and duties of the agency referred to in sub-section (1) shall be such as may be prescribed.

(7) For carrying out the provisions of sub-section (4), the agency referred to in sub-section (1) may call for information and give direction to the service providers/ communications service providers, intermediaries, data centres, body corporate and any other person/ agency/ organisation.

(8) Any service provider/ communications service providers, intermediaries, data centres, body corporate or person/ agency/ organisation who fails to provide the information called for or comply with the direction under sub-section (6), shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to one lakh rupees or with both.

(9) No court shall take cognizance of any offence under this section, except on a complaint made by an officer authorised in this behalf by the agency referred to in sub-section (1).

(10) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

2. Establishment of National Interception & Monitoring Authority

(1) The Central Government shall, by notification in the Official Gazette, appoint an agency of the Government to be called the National Interception & Monitoring Authority;

(2) The Central Government shall provide the agency referred to in sub-section (1) with a Director General and such other officers and employees as may be prescribed;

(3) The salary and allowances and terms and conditions of the Director-General and other officers and employees shall be such as may be prescribed;

(4) The National Interception & Monitoring Authority shall serve as the single 24*7 National agency for performing the following functions in the area of Communications' Interception and Monitoring, –

i. Approval of interception & monitoring requests related to all the conventional, mobile, internet, OTT, or other form of content of the communication service, including voice calls, messages, MMS, video messages or other such communication service;
ii. Any other such function so as to facilitate LEAs;
iii. Ensuring transparency of the process and functions;
iv. Ensure transparency of process
v. Protecting privacy of citizens;
vi. All LEAs in Centre and state shall put interception and monitoring requests to this body only

(5) The manner of performing functions and duties of the agency referred to in sub-section (1) shall be such as may be prescribed.

(6) For carrying out the provisions of sub-section (4), the agency referred to in sub-section (1) may call for information and give direction to the service providers/ communications service providers, intermediaries, data centres, body corporate and any other person/ agency/ organisation.

(7) Any service provider/ communications service providers, intermediaries, data centres, body corporate or person/ agency/ organisation who fails to provide the information called for or comply with the direction under sub-section (6), shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to one lakh rupees or with both.

(8) No court shall take cognizance of any offence under this section, except on a complaint made by an officer authorised in this behalf by the agency referred to in sub-section (1).

(9) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

3. **Setting up new Digital communication tribunal**

GoI shall set up new tribunal with futuristic technology approach and resolve disputes related to Digital communication and crimes under the new act. Judges posted in this tribunal must have at least 10 years' experience in the field of communication and a law degree. At present the Judiciary doesn't have proper technical knowledge to deal with such matters.

4. Declare IMEI cloning, tempering and other tempering in mobile devices as criminal act and fix jail term for this kind of acts.

5. Stipulate Calling number identification spoofing/forging or impersonation of any form (mobile call/SMS/OTT etc) as a criminal act, liable to face jail term and fine.

6.

NEW LEGAL FRAMEWORK FOR TELECOM SECTOR

From : bharatgupta trai <bharatgupta.trai@gmail.com> Thu, Sep 01, 2022 02:06 PM
Subject : NEW LEGAL FRAMEWORK FOR TELECOM SECTOR 1 attachment
To : Naveen Kumar <naveen.kumar71@gov.in>

Dear Sir,

Please find attached my recommendations on the subject.

I am submitting these Recommendations in my individual capacity.

Would be happy to discuss and be part of future deliberations.

Best regards,
Bharat Gupta
Mobile: 08373915119

Legal Framework for Governing Telecommunications (1).docx
51 KB

Suggestions/Recommendations
on
Consultation Paper released by DoT on 23-07-2022 regarding "Need for a new legal framework governing Telecommunication in India"

1. Indian Telecom Sector is governed mainly by the following Acts:
   (a) The ***Indian Telegraph Act, 1885.***
   (b) The ***Indian Wireless Telegraphy Act, 1933.***
   (c) The ***Telegraph Wires(Unlawful Possession) Act,1950.***
   (d) The ***TRAI Act,1997.***
   (e) The ***Information Technology Act, 2000.***

2. The Department of Telecom draws power primarily through the Indian Telegraph Act,1885 which is almost 137 years old. Telecommunication has undergone a sea change since then, thanks to the rapid development of technology to cater for the new age requirements. In case of India, we have seen the transition of telecom services being provided purely by Government (DoT), followed by PSUs (BSNL and MTNL) and now by the PSUs as well as the Pvt players. Post the notification of NTP-1999, with the inception of mobile services and Internet, entire Telecom scenario has undergone a sea change.

3. Telecommunication has been included in the "***Essential Services Maintenance Act,1981***"; also, being a strategic asset, Telecommunication has been identified as a National Critical Information Infrastructure. All the sectors/ engines of growth of our economy heavily rely on the digital connectivity, any disruption of the communication network would be detrimental to the functioning of the nation. In the recent past, during the COVID-19 pandemic, it was the telecommunication network that enabled the logistic operations, health sector, education sector, economy, manufacturing etc to continue functioning.

4. Though the Indian Telegraph Act 1885 is more than 137 years old, it has withstood the test of time; thanks to its versatility and broad-based approach- which enabled an orderly growth of telecom sector in our country. Very few countries in the World might have a similar versatile Act. The definition of 'Telegraph' in this act is very broad, encompasses all means of telecommunication, even the futuristic Free Space Optics for communications. Section 4 of the Act provides all necessary powers to the Government. It has allowed Telecom liberalization and privatization, etc.

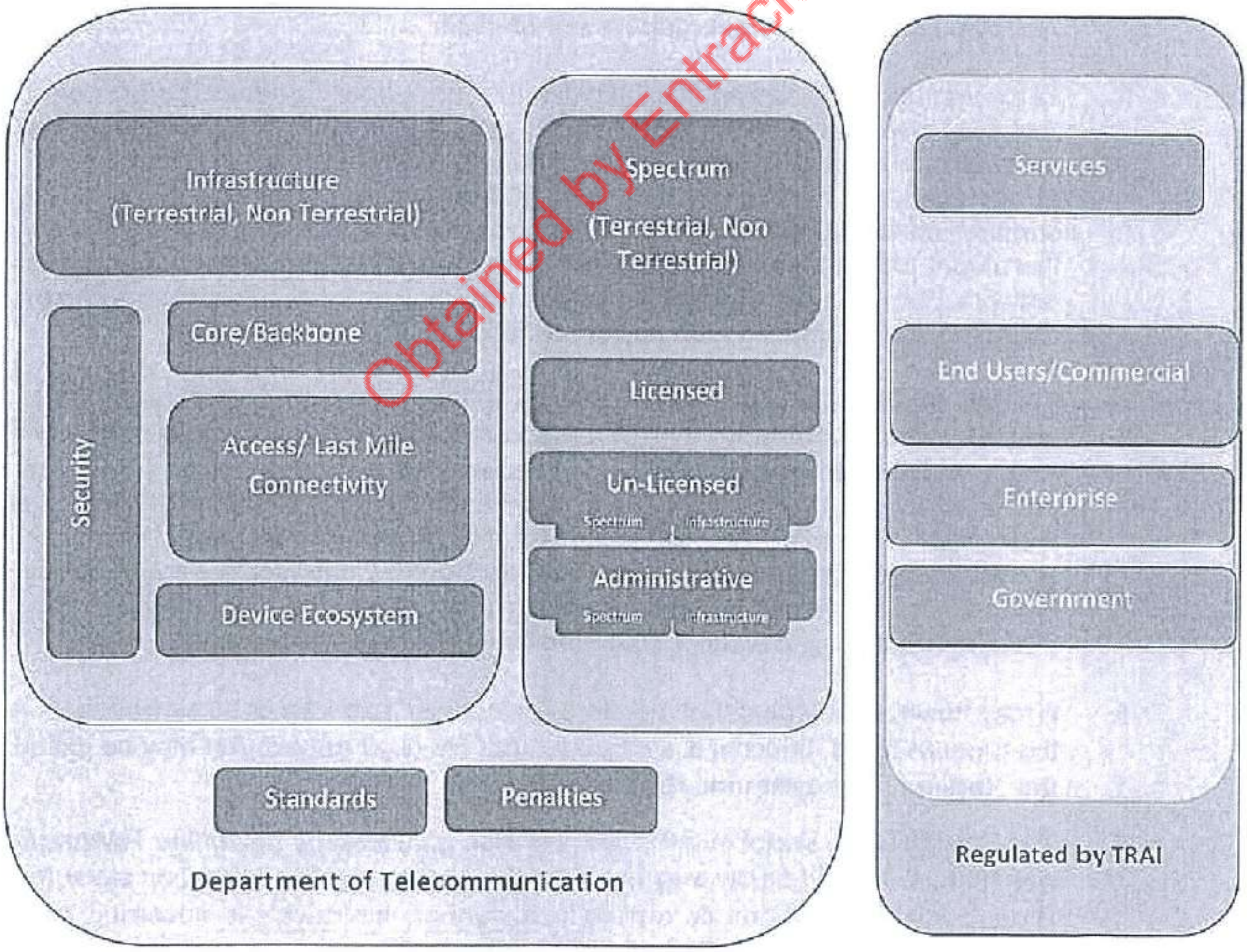
5. It may however be noted that the word "Telegraph" has little or no significance in the modern times, hence it is suggested that the new/ revised Act may be called the "**Indian Telecommunications Act**".

6. The Broadcasting sector in our country is also governed by the Indian Telegraph Act,1885; This incidentally may not be in the best interest of the nation since the Broadcasting Sector has its own issues, further, the sector is governed by a different ministry i.e Ministry of Information & Broadcasting. In view of the foregoing, it is recommended that a new act be framed for it keeping the sector into consideration. Also, the new Regulator be created for the Broadcasting sector; The telecom sector should continue to have TRAI as the regulator.

7. It is suggested that the fundamental essence of the Indian Telegraph Act,1885 be retained, the proposed new Act should be enabling, short and simple. Details for specific activities/ aspects of different telecom services can form part of ***Rules*** that may be framed basis the requirements as it is much easier to amend the Rules, as compared to amending the Act. New Law should enable formulation of Rules for various services/ aspects. Also, the new act should be in sync with the various other Acts, i.e IT Act, proposed Data Privacy Act. The existing service rules should be amended along with the new law.

8. It is suggested that "***Digital Connectivity be declared as a Fundamental Right***" under the new act as 'Connectivity' if fundamental for survival of human race in the modern world.

9. While it would be essential to examine the existing Acts clause wise, it is suggested that the Telecom Sector may be viewed under the following structure and broad enabling provisions created so as to ensure that each area is addressed in the proposed Act



10. Infrastructure: Enabling provisions for creation of Digital Infrastructure is mandatory for Telecommunication services. Since "Right to Digital Connectivity"

has been proposed in the Act, it is the responsibility of the Government to ensure that necessary digital infrastructure is created in a time bound manner. Government may on its part create suitable provisions in the Licensing conditions to ensure sharing of active and passive infrastructure, time bound permissions by local administrative authorities for creation of infrastructure in their jurisdiction. Standards of encryption and necessary security measures(physical as well as digital) can be covered under the Rules based on the latest standards and technologies.

11. Last mile access/connectivity: Access to last mile connectivity and availability must be without any discrimination, restriction, interference. Practices like blocking, slowing or granting preferential data speeds or treatment of any content must be not allowed. In case there is a need for imposition of black-out of communication in specific regions for Internal Security reasons, LEA may request so to the Authority- who in turn would ensure that the same is done in a time bound manner. Mandatory provisioning of the last mile connectivity at prevailing data speeds(Urban areas) in economically backward, geographically inhospitable, remote areas need to be factored in the license conditions.

12. Device Ecosystem: The definition of the communication device has been drawn from the 2008 Amendment of the IT Act, 2000. Going forward, with the emergence of new technologies like IoT, M2M communication etc- a generic definition such as "Trans-Receiver" for use on telecommunication network may be adopted. As regards the standards, protocols and Security is concerned- the act should state that the "Device should conform to the relevant standards notified by the Government and International Certifying organizations".

13. Security: The Telecommunication Pipes (Core/Backbone Network) as well as the various modes of last mile delivery (Faucets) carry digital signals; also the connectivity between humans to machines, machines to machines, devices to devices etc is predominantly digital in nature. Since Right to Privacy has been declared as a Fundamental Right by the Apex Court of India, it is essential that both the personal and non-Personal data is secured while in transit as well as at rest (when stored). The pipes and faucets of the Telecommunication network therefore need to be secure. The Data Privacy Laws as and when enacted would look into the specifics, however the proposed Telecommunication Act should mandate secure Backbone, Access and last mile connectivity. Government/Licensee would be responsible to the end users for provisioning the privacy and secrecy over the telecommunication network.

14. Spectrum: Importance of Telecommunication and the Laws governing the sector have been covered in para 3 above. It is pertinent to note that Spectrum is a finite natural resource hence it needs to be employed judiciously for achieving Socioeconomic advantages for the country. In view of the foregoing, we suggest the following provisions in the proposed Act:

    (a) The Central Government may, grant any spectrum rights, licenses, authorizations, permits to any person or class of persons, or to all citizens by individual licenses or class licenses unconditionally or subject to such conditions, as the Central Government may impose and specify in the grant of the spectrum right, including conditions on the sharing and trading of radio frequency spectrum; and

(b) Provided that the Central Government may exempt any frequency or frequency band(s) from Licensing requirements unconditionally or subject to such conditions as the Central Government may impose.

(c) Central Government may employ best available method International/ Domestic to determine the grant of a spectrum right.

(d) Provisions need to created so that the Head of the Government can direct the Authority(DoT) to grant a spectrum right in any specific case of national interest.

(e) RF Spectrum is important for the national Defence as well as internal security. Availability of right amount of spectrum at the right time for deploying of various platforms is essential. While DoT should be the custodian of the entire RF spectrum up to 3000 GHz, under no circumstances, Spectrum sought by the Defence be denied by the Authority. Other ministries such as Home, Railways etc. be allocated spectrum on need basis.

(f) To ensure non-cartelization/ colonization of RF spectrum, Quantum of spectrum allocated to the Licensees should be done in an equitable manner. Not more than 25% of the total available spectrum should be held with each licensee at any time.

15. Services: At present, there are twelve Telecom Services being provided by the Service providers. As we move forward, several innovative services may evolve to meet the requirements; Government intervention/regulation of these services is not recommended. However, it is equally important to ensure that adequate Quality of Services(QoS) are provided to the users- Need for the Regulator to frame regulations and regulate the QoS will therefore be essential. In this regard, the Regulator be enabled with the Quasi-Judicial powers to effectively discharge its role.

16. Penalty:Existing provisions of the Indian Telegraph Act, 1885 be retained with one recommendation that all Criminal Offences be converted to Economic Offences.

17. Comments/Suggestions on the existing Telegraph Act:

Privileges of the Government:

(a) Section (4): No Change.

(b) Section (5): Rule 419 A of the Indian Telegraph Rule, 1951 regarding interception needs to be added (Notified on 08 Feb 2014).

(c) Section(6) and (6A): Needs to be deleted as no longer relevant.

(d) Section (7) and (7A): To be retained.

(e) Section (7B): The should be a provision for the complainant to approach the Apex court in case he is not in agreement with the Arbitrator. Therefore (7B)(ii) needs to be amended.

(f) Section (9): Already amended due to Indian Telegraph (Amendment) Act, 2003. A new section on the Telecom Development Fund(TDF) with following provisions may be added:

(i) Section (9E): For the research and development of Indigenous Telecom Equipment and to encourage the local manufacturers, a Technology Development Fund be set-up under the relevant budget head of the Authority. Quantum of the Fund would be decided by the Government based on the necessity and availability of the funds.

Power to Place Telegraph Lines and Posts

(g) Section(10)(iv); Need to be amended. The line "*All persons interested for any damage sustained by them*" should be replaced by "A central Authority"; *the central Authority would thereafter transfer the compensation to the relevant entities upon application. Reasonable charges would be restricted only to restoration charges, notified by the Government and revised after every five years.*

18. Section (11) to (19) : Provisions of RoW Rules, 2016 issued om 15 Nov 2016 as well as RoW Rules, 2021 need to be included in the relevant sections. Rest No changes recommended.

The Telegraph Wires(Unlawful Possession Act), 1950

19. Most of the Act deals with illegal possession of telegraph lines/wires. In the present day context, very few sections are relevant. Nevertheless, some portion of the Act may be retained and modified so as to address the issue of illegal telephone exchange, illegal Internet Exchange points, illegal secondary switching points etc. Relevant portions of the existing Act may be subsumed in the proposed Indian Telecommunications Act. Following sections may be deleted:

(a) Section (2): This section is centered around copper cables, whereas in the modern times copper wires have been replaced with new mediums, hence the same be suitably amended post consultation.

(b) Section (4), (4A): To be deleted as not relevant anymore.

(c) Section (5): To be deleted as no longer relevant.

(d) Section (6A) and (6B) may be modified and retained.

Response to the Consultation paper " Need for a new legal framework governing Telecommunications in India"

From : rk@consultrk.com Thu, Sep 01, 2022 04:35 PM

Subject : Response to the Consultation paper " Need for a new legal framework governing Telecommunications in India"

To : Naveen Kumar <naveen.kumar71@gov.in>

1st Sept 2021

Response to the Consultation paper by DOT

" Need for a new legal framework governing Telecommunications in India"

DOT has embarked on a very well timed and vital exercise to look at the legal framework of the licensing and governing the Telecommunications in India, over the last three decades there have been leaps in technology, the way the telecom services are provided and consumed. Telecom is new currency of communications and ecommerce today. It is not merely left to communication but plays vital role in financial inclusion of the common man, taking education to the remotest corner of the country, provision of the governmental schemes to the common man. We have experienced the importance during the pandemic.

I am are sure that developing will a new legal frame work will be step forward in the direction of ease of doing business , boost investor confidence and will be step forward in making India a digital super power.

I will like to give few suggestions, which may be kindly look into it.

1. Service Providcer to have freedom to choose their satellite operators and long term contracts.

TRAI in its recommendations in Ease of doing business in the Broadcasting sector recommended as

D: Frequency allocation and grant of WOL by WPC, and permission to operationalize broadcast services by NOCC

4.8 The Authority recommends that

a) WPC should allocate the spectrum for commercial satellite usage as and when there is a demand for the same from service providers in a time bound manner.

b) The WOL should be valid for a period equivalent to service license/ permission period.

c) The service providers should continue to pay requisite fees to WPC on annual basis; and the same should be paid at least 60 days before the due date to ensure continuity of the license. A condition should be prescribed in the WOL that any delay in payment of requisite fees shall lead to penalties and cancellation of the applicable license. [

E: Time frame to grant permissions by MIB and WPC

4.9 The Authority recommends that:-

a) MIB should setup an integrated online portal for broadcasters, teleport operators, and distributors of TV channels (DTH operators/HITS operators/MSOs) which should facilitate the filing of applications, processing in MIB, DoS and DoT, tracking of status of applications, payments, frequency allocations, endorsements, permissions, licenses, registrations, and renewals with common database. Preferably, this portal should be integrated with other eGovernance systems like Bahartkosh 17 portal, e-Office application etc. Access to the portal should be provided to the Authority also for information and analysis.

It has been some time that these recommendations have been made and it will go a long way in giving the service providers, investors confidence that the have the flexibility and a time line to work with . Broadcast service providers can make their business plans accordingly.

2. Tenure of the agreements with Satellite providers : Service provider should be able to choose the Satellite capacity provider and the timeline of their agreements. There can be simply a list of the approved satellites published six monthly and service provider can contract directly for the capacity for the tenure it wishes. The longer term contract will benefit in lower prices, which will be ultimately passed on to the consumer. This will increase competition among the Satellite providers as they will see this market from a long term perspective and will thus offer better prices and plan additional /replacement capacities.

3. WPC Fees The WPC charges of Rs 21 lacs per transponder per annum is high and should be rationalized and should be able to cover the administrative costs only.

4 . Use of the bandwidth allocated. The service provider should have a full flexibility to the extent it can change the modulation, data rate and FEC etc as per his requirements rather then fixing it and and again asking for permission again. It should be mandated that by chaning the parameters he will ensure that his service does not causes interference to the other service providers and he has updated the information by informing to WPC or DOT as the case may be via an online portal .

5. . Online Portal for WPC/NOCC and other permissions across departments. Having Online platform will help transacting businesses fast and will reduce the paper work to a great extent. The portal should be used by all governmental departments which are in involved in the process of giving the permissions .

6 ..All permissions to be coterminous with the license period and addition of services. The permissions to the teleports should be for 10 years which is the license period for a channel. The fees may be paid annually. The flexibility should be provided to the teleport operators that if they wish to operationalize any additional channel on the same transponder with in the bandwidth allocated , the teleport operator should be free to add the service and is just required to update the information on the portal. If a new channel is added on the capacity already allocated to the teleport operators then it should allowed on self declaration basis.

The existing limitations on the bandwidth per channel should be dispensed with as the technologies are developing new codecs are making the processing of signals more efficient.

7 Satellite Spectrum and Orbital slots : Satellite slots and spectrum are governed by ITU guidelines and thus it is important for us a nation to be seen as an entity which honors those. Satellite providers will then be able to plan long term capacities over India. With NGSO services being launched the spectrum for all will have to be ensured. Thus Satellite Spectrum will have to be protected . Going forward looking at the ground conditions we will need to offer a combination of the satellite and terristial services and thus adequate capacity will have to be created which will need significant investments.The Satellite slots are as per the ITU allotments and may belong to different administrations who may not be wiling to leave those and thus it is important that India has a clear policy on the same and assure the International players to come and establish capacities over Indian skies and still be able to honor their international obligations

I am an industry expert having served at senior corporate positions in the Industry and I am submitting this reponse as an individual and will be always available for a discussion on the same.

Regards
Rajiv Khattar

9899456795

rk@consultrk.com

1 September 2022

Department of Telecommunications
Ministry of Communications
Sanchar Bhawan 20,
Ashoka Road, New Delhi 110001

Subject: Comments to consultation paper titled '*Need for a new legal framework governing Telecommunication in India*' issued by Department of Telecommunications

Respected Sir / Madam,

To begin with, we would like to congratulate the Department of Telecommunications (**"DoT"**) in its endeavours to undertake the public consultation for the consultation paper on '*Need for a new legal framework governing Telecommunication in India*' (**"Consultation Paper"**).

We would also like to convey our gratitude to DoT for providing all stakeholders with an opportunity to provide comments in respect of the Consultation Paper. The Consultation Paper has been issued at an appropriate juncture, when the telecom landscape in India is set to undergo a dramatic change with the rollout of 5G. To catapult the industry into the next phase, the Government has issued a slew of reforms over the past couple of years, but there is a unanimous view in the industry that a lot more is required to be done to catalyse the transgression to the next industrial revolution. An overhaul of the existing legal and regulatory framework will usher the proliferation of 5G and other emerging technologies like cloud services, artificial intelligence, machine learning, distributed ledger technology, etc. at the anticipated scale and open floodgates for foreign investment in the sector.

In this light, we have set out below our comments and recommendations in respect of the Consultation Paper below and suggested desirable changes to the framework or processes, wherever applicable.

COMMENTS AND SUGGESTIONS TO ISSUES HIGHLIGHTED IN THE CONSULTATION PAPER

1. *Simplification of the regulatory framework*

1.1. Vide the Consultation Paper, the DoT has indicated the need for a new law for the telecommunications sector which enables emerging technology, promotes investment and provides regulatory certainty to the Industry. With a view to promote ease of doing business, we understand that the DoT seeks comments on simplification of the current telecom regulatory framework. In view of the above background, we would take this opportunity to put forth certain comments towards simplification of the existing telecom regulatory framework.

Need for revision in the existing telecom licensing framework

1.2. As highlighted by the DoT in the Consultation Paper, the existing telecom laws of India date back to pre-independence era, and thus, they must evolve to address the current state of affairs. In furtherance of the above, the existing definitions of key terms (including "telegraph", "wireless telegraphy", etc.) are extremely wide, which on a plain reading seem to include apparatus and devices that may not be telecommunications devices per se. This creates regulatory uncertainty, as to whether a particular device would be classified as a '*telegraph*' or a '*wireless telegraphy apparatus*', or not.

1.3. To begin with, a comparison of the definitions of key terms as defined under the current Indian law and as defined under the laws of other prominent jurisdictions may be helpful:

S. No.	Definition under current Indian law	Definition under foreign laws
1.	**Definition of "wireless communication"** *"'wireless communication' means any transmission, omission or reception of signs, signals, writing, images and sounds, or intelligence of any nature by means of electricity, magnetism, or Radio waves or Hertzian waves, without the use of wires or other continuous electrical conductors between the transmitting and the receiving apparatus."*[1]	**Definition of "wireless telegraphy" in the United Kingdom.** *"(1)"wireless telegraphy" means the emitting or receiving, over paths that are not provided by any material substance constructed or arranged for the purpose, of energy to which subsection (2) applies.* *(2) This subsection applies to electromagnetic energy of a frequency not exceeding 3,000 gigahertz that— (a) serves for conveying messages, sound or visual images (whether or not the messages, sound or images are actually received by anyone), or for operating or controlling machinery or apparatus; or (b) is used in connection with determining position, bearing or distance, or for gaining information as to the presence, absence, position or motion of an object or of a class of objects."*[2]
2.	**Definition of "telegraph"** *""telegraph" means any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing,*	**Definition of "telecommunications" under Singapore law.** *""telecommunications" means a transmission, emission or reception of signs, signals, writing, images, sounds or*

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[1] Section 2(1), The Indian Wireless Telegraphy Act, 1933.

[2] Section 116, Wireless Telegraphy Act, 2006 (United Kingdom); Wireless Telegraphy Act 2006 (legislation.gov.uk)

	images and sounds or intelligence of any nature by wire, visual or other electro-magnetic emissions, Radio waves or Hertzian waves, galvanic, electric or magnetic means"[3]	*intelligence of any nature by wire, radio, optical or other electromagnetic systems whether or not such signs, signals, writing, images, sounds or intelligence have been subjected to re-arrangement, computation or other processes by any means in the course of their transmission, emission or reception;"*[4]
		Definition of "telecommunications" and "telecommunications equipment" under United States law. *"The term 'telecommunications' means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."*[5] *"The term 'telecommunications equipment' means equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades)."*[6]

1.4. As is evident from the table above, under UK, US and Singapore laws, the definition of key terms, such as '*telecommunications*' have been defined in manner to exclude equipment or apparatus that is not used in a telecommunications context. For instance, under Singapore law, telecommunications means transmission of signals / information by *"wire, radio, optical or other electromagnetic systems"*,[7] whereas the Indian law defines 'telegraph' to include *"any apparatus"*[8] thus creating a wide scope for this definition.

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[3] Section 3(1AA), Indian Telegraph Act, 1885.

[4] Section 2, Communications Act, 1999 (Singapore); Telecommunications Act 1999 - Singapore Statutes Online (agc.gov.sg)

[5] Section 3(a)(48), Federal Telecommunications Act, 1996 (United States of America); Telecommunications Act of 1996 (fcc.gov)

[6] Section 3(a)(50), Federal Telecommunications Act, 1996 (United States of America); Telecommunications Act of 1996 (fcc.gov)

[7] Section 2, Communications Act, 1999 (Singapore); Telecommunications Act 1999 - Singapore Statutes Online (agc.gov.sg)

[8] Section 3(1AA), Indian Telegraph Act, 1885.

1.5. Separately, as the current license framework covers a wide array of service authorisations, it would be helpful if DoT simplifies the structure of the license agreement such that any service authorisation specific terms are limited and covered in 1-2 pages.

Recommendations

As a first step, the key terms and definitions captured in the Indian Telegraph Act, 1885 and the Indian Wireless Telegraphy Act, 1933 must be revisited and aligned with the needs of the present times, where use of information technology equipment (which can, strictly speaking, fall within the ambit of the present definition) is widespread. Streamlining definitions will provide an effective starting point to define the ambit of the licensing framework and therefore, it is important to avoid terms and expressions that will expand the ambit unnecessarily. Also, there are several obsolete provisions (e.g., reference to 'telegraph authority' / 'telegraph officer', etc.) in the Indian Telegraph Act, 1885 and the Indian Wireless Telegraphy Act, 1933 which may be revisited in view of industrial and technological evolution.

Additionally, the license agreements require an extensive overhaul as they were originally devised at the nascent stage of India's foray into privatised telecom space. To add to this, the genesis of the licenses is in a law that is over a century old. Since technology has grown by leaps and bounds to an unimaginable scale, the license terms are in dire need of a rehaul.

1.6. Pertinently, the Indian Telegraph Act, 1885 is the primary statute that sets out the regulatory framework for the telecommunications industry in India. As stated above, this statute is approximately one hundred and forty years old, whereas technology (especially considering IoT, M2M, etc.) is evolving each day. Thus, to create an enabling framework for emerging technology and to promote investments into the industry, there is a need for unbundling the various layers relating to telecommunications services. Also, apart from certain provisions in the Indian Telegraph Act, 1885 most of the sections do not relate to technologies and state of the industry as on date.

1.7. TRAI in its recommendations titled '*Enabling Unbundling of Different Layers Through Differential Licensing*' identified four important layers, viz. (a) infrastructure, (b) network, (c) service and (d) application in the provisioning of telecommunications services. The existing legal and regulatory framework does not clearly identify or create separate regulatory regimes for each layer.

1.8. Additionally, with the introduction of the UL(VNO) framework (service layer), IP-I registration (infrastructure layer) and '*Guidelines for Registration Process of M2M Service Providers*' (application layer), the DoT has attempted to set out sub-regulations for different layers of the telecommunications sector. Yet, the distinction between the various layers is not prominent in the existing regulatory framework. There is a need to clearly set out the distinction between the four layers for provisioning of telecommunications services, as entities facilitating each layer of the telecommunications services are different in respect of the scope and nature of services provided and may not wish to take all responsibilities upon themselves. Therefore, regulatory obligations and responsibility of all the stakeholders in the telecommunications ecosystem must not be measured with the same yardstick.

Recommendations

The DoT must clearly identify and incorporate the layers of telecommunications services in the new laws or regulations. This will ensure that any new or existing stakeholder is able to determine its role in the telecom regulatory ecosystem. Additionally, separate sub-regulations may be made for each layer, so that there is regulatory certainty and transparency for each layer. This has also been identified by TRAI in its recommendations titled *'Enabling Unbundling of Different Layers Through Differential Licensing'*, where it proposed a separate *'Access Network License'* to be granted specifically for establishing a telecommunications network, and license holders of this service authorization would only be allowed to provide services through a UL (VNO) licensee.

Issues relating to obtainment of clearances / approvals.

1.9. A telecom licensee is required to obtain approvals / clearances from, inter alia, the DoT, Ministry of Home Affairs ("MHA"), state governments and municipal bodies for obtaining 'Right of Way' ("RoW"). While the process for obtaining and applying for clearances / approvals have been simplified to a great extent with the introduction of the 'Saral Sanchar' and 'GatiShakti Sanchar' portals, there are certain approvals / requirements for which neither a clear timeline, nor procedure is set out. A few of such approvals / requirements are set out below:

1.9.1. *Security clearances from MHA.* The 'License Agreement for Unified License' ("UL") and the 'License Agreement for Unified License (Virtual Network Operators)' ("UL-VNO") require a licensee to obtain prior security clearances for any foreign personnel deployed for installation, operation and maintenance of the licensee's network; and if the positions of the chairman, managing director, chief executive officer (CEO) and/or chief financial officer (CFO), if held by foreign nationals, are vetted by the MHA on yearly basis. However, fixed timelines for issuance of such clearances are not set out.

1.9.2. *Remote access.* Telecom licensees are required to obtain prior approval of the DoT for providing remote access to locations abroad. The DoT has not prescribed any clear timelines for the issuance of remote access related approvals.

1.9.3. *Approvals relating to the Wireless, Planning and Coordination Wing, DoT* ("WPC"). Multiple approvals and licenses are issued by the WPC, which *inter alia* relate to import of network equipment, allocation of microwave carriers, etc. While WPC related approvals / licenses can be applied on the *Saral Sanchar* portal, however, no clear timelines are set out for the issuance of such approvals / licenses.

1.9.4. *Obtaining space segment from Department of Space, Government of India* ("DoS"). In relation to the use of space segment on Indian satellites, licensees are required to obtain space segment from the DoS, for which the licensees are required to fill the 'INSAT Capacity Request Form'. There are no clear timelines or visibility of the application to the licensees with respect to obtaining space segment.

Recommendations

To address the issues identified above, there is a need to streamline the approval / clearance processes, by setting out clear timelines in the new laws and regulations envisaged by the DoT. This becomes more critical, considering that multiple government authorities / departments may be involved in the issuance of the required approvals / clearances. In order to address such issues, a 'single-window clearance system' may be envisaged for the telecommunication industry. For example, the Department for Promotion of Industry and Internal Trade (DPIIT) launched the 'National Single Window System'[9] to facilitate provision of all approvals required for setting up industries across centre and state governments. A similar initiative could be undertaken for the telecom industry as well.

Need for regulatory guidance

1.10. Considering that telecom regulation consists of highly technical aspects, such as obtaining 'equipment type approval' license from the WPC and requirements for undertaking mandatory testing of equipment, which requires an analysis of whether an equipment would fall within the ambit of the mandatory testing or equipment type approval requirements or not. Additionally, the scope of certain service authorizations under the UL and UL-VNO, i.e., the extent of activities that can be undertaken by a licensee, require an interpretation of the text of the UL and UL-VNO.

1.11. However, there is no regulatory guidance or a designated authority that a prospective or existing licensee can approach in case there is any uncertainty or doubt relating to the applicability or scope of any regulation or license condition.

Recommendations

The DoT may issue regulatory guidance relating to its regulatory requirements and enforcement of the UL and UL-VNO, from time to time. Additionally, in order to address questions and issues faced by the industry, relating to applicability and scope of regulations, the DoT may consider create a forum for existing and prospective licensees. For example, the Security and Exchange Board of India ("SEBI"), launched the 'informal guidance scheme'10 in 2003, allowing SEBI regulated entities to seek informal guidance from the SEBI on payment of a fixed fee. While SEBI's informal guidance cannot be enforced, such guidance provides regulatory clarity to the requestor.

2. *Spectrum management*

2.1. Based on the Consultation Paper, we understand that DoT is aiming at a legal framework for spectrum which will *inter alia*:

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[9] National Single Window System, DPIIT; India's National Single Window System for Business Approvals | NSWS

[10] SEBI Informal Guidance Scheme, 2003; SEBI | SEBI (Informal Guidance) Scheme 2003

2.1.1. Enable the utilization of the spectrum in a liberalized and technologically neutral manner, and allow a spectrum assignee to deploy new technologies.

2.1.2. Maintain policy continuity, allowing the existing spectrum (and exemptions) assigned at present to continue for a specified time period.

2.1.3. Ensure flexibility to the Central Government for spectrum usage in public interest.

Spectrum leasing and sharing arrangements

2.2. Currently, assignment of access spectrum is carried out via the auction process conducted by the Government where the terms of such auction (including eligibility, submission of bids, etc.) is set by DoT. With the auction of spectrum in 3300-3670 MHz band, it may provide a boost to IMT and 5G services in India.

2.3. However, one of the issues faced by the industry in this regard is that only limited entities are permitted to and able to participate in these auctions. This is critical as use of spectrum by private entities is pivotal for technological advancement.

2.4. In this regard, the guidelines issued on captive non-public network ("**CNPN**") license and spectrum leasing to enterprises is a significant development, especially in view of direct assignment of spectrum to enterprises by DoT. That said, given that this is only in the nascent stage, the industry is keenly awaiting further clarity and guidance on this aspect.

2.5. We understand that DoT is currently conducting demand studies to assess the conditions for direct spectrum allocation. However, in the interim, some entities have raised concerns with the high minimum net-worth requirement of INR 100 Crores for seeking direct spectrum assignment from Government. In our view, a reduction in this minimum net-worth requirement may remove some entry barriers and regulate the competition, aid in technological advancements by start-ups and smaller organizations, etc.

2.6. Additionally, it is important to consider that there are limited players who participate in these auctions and thereafter can lease the spectrum to CNPN licensees. There should be regulations to ensure that spectrum can be effectively shared with the industry with regards to principles of non-discrimination and reasonability. Certain guidelines for spectrum leasing arrangements may be helpful. The following may be relevant to consider in this regard:

2.6.1. Given that it would be difficult to set out a blanket valuation / costing methodology, some inference may be drawn from the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 ("**Broadcasting Interconnection Regulations**") which *inter alia* govern commercial and technical arrangements among service providers for interconnection for certain broadcasting services.

2.6.2. Importantly, the Broadcasting Interconnection Regulations *inter alia* restrict exclusive contracts which prevent other distributors from obtaining signals and bundling or packaging of the channels in any particular bouquet, require non-discriminatory and reasonable terms for interconnection offers, etc.

2.6.3. In relation to spectrum leasing arrangements, it would be helpful to incorporate some of these aspects along with certain general conditions for such lease contracts (e.g., minimum security conditions, termination and prior notice requirements, inspection and audit conditions, etc.).

Recommendations

(a) We recommend that DoT provide clarity and issue further guidelines for direct spectrum assignment to enterprises. Additionally, in relation to direct spectrum assignment, we request DoT to consider a reduction in the minimum net-worth requirement of INR 100 Crores for seeking direct spectrum assignment from Government as it may pose some entry-barriers for the industry, especially start-ups.

(b) We also recommend that DoT may consider formulating further guidelines for spectrum leasing arrangements between telecom licensees and enterprises to restrict exclusive arrangements, bundled services, imposition of discriminatory and arbitrary terms, etc. Additionally, DoT may consider setting out certain general conditions for such lease contracts (e.g., minimum security conditions, termination and prior notice requirements, inspection and audit conditions, etc.) to ensure non-discriminatory and fair treatment to enterprises.

Spectrum refarming / redeployment

2.7. Another important consideration in relation to spectrum management is effective utilization of any idle or under-utilized spectrum. For this, refarming of unutilized bands may prove to be a relevant consideration. Refarming of spectrum has also been given global recognition with various countries taking steps towards spectrum redeployment. For context, the International Telecommunications Union ("ITU") defined spectrum refarming as follows[11]:

> *"Spectrum redeployment (spectrum refarming) is a combination of administrative, financial and technical measures aimed at removing users or equipment of the existing frequency assignments either completely or partially from a particular frequency band. The frequency band may then be allocated to the same or different service(s). These measures may be implemented in short, medium or long time-scales."*

2.8. In India, there are no firm guidelines in place for redeployment or refarming of spectrum. In this regard, we refer to the following section from the consultation paper on *'Auction of*

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[11] Recommendation ITU-R SM.1603-2 (08/2014) on *'Spectrum redeployment as a method of national spectrum management'* issued by the International Telecommunication Union, page 1

Spectrum in frequency bands identified for IMT / 5G' ("**IMT / 5G Auction CP**") issued by the Telecom Regulatory Authority of India ("**TRAI**") on 30 November 2021:

> *"1.28 2100 MHz spectrum band (3GPP band B1) was opened up in India for deploying 3G networks. With the introduction of LTE services in India, 3G services started to fade away and TSPs started to migrate from 3G services to LTE services. Similar trend has been seen in other countries also. In some of the countries, the TSPs have closed down 3G services and reformed this band for deploying 5G services. Indian TSPs have also closed down / closing down 3G services in the country on geographic area basis.*
>
> *1.29 As per GSMA18 2100 MHz is the most reformed band for 5G; 6 out of the 58 new 5G network launches in the previous six months up to Q1 2021 were supported by spectrum in the 2100 MHz band. Up to Q1 2021, 18 numbers of 5G Networks and 106 4G networks were launched in 2100 MHz band."*

2.9. TRAI also undertook an assessment of utilizing of certain bands in the IMT / 5G Auction CP. Amongst other bands, TRAI stated the following for the 800 MHz spectrum band:

> *"2.16 India has adopted FDD configuration based 3GPP band 5 for 800 MHz spectrum band. Considering that the telecom operators, already utilizing this band for other older mobile technologies, may like to reform it for deploying latest mobile technologies, 3GPP has defined corresponding 5G band with the similar frequency arrangement, as band n5."*
>
> *"2.18 On examination of the information provided by DoT on frequency-wise spectrum allocation in 800 MHz band, it is observed that a total of 1.8 MHz of spectrum (available in disjoint small chunks less than the carrier size of 1.25 MHz individually), has been marked as guard band. If harmonization exercise is carried out and these are made contiguous, additional spectrum can be made available in all the LSAs."*

2.10. Following up on the IMT / 5G Auction CP, TRAI also issued its recommendations on *'Auction of Spectrum in frequency bands identified for IMT / 5G'* on 11 April 2022 ("**IMT / 5G Auction Recommendations**") where it noted that:

> *"2.19 To enable use of 526-582 MHz for IMT deployment, DoT should come out with a plan for reforming this band to be utilized for IMT deployments. DoT should work with MIB to prepare a plan for an early migration from Analogue to Digital Transmission, so that major part of the frequency band from 526-582 MHz can be vacated for IMT services. Considering that ITU has identified spectrum in 470-698 MHz as an IMT band in Region 2 & Region 3, DoT may adopt a holistic approach and review the entire frequency range starting from 470 MHz to 582 MHz.*
>
> *2.20 In case, complete reforming of 526-582 MHz frequency range for IMT is not feasible, DoT may explore the possibility of this band being used for IMT as well as for*

> *broadcasting by MIB on coexistence basis. Refarming of this frequency range for IMT may be performed in a phased manner so that as and when some frequency carriers are vacated, the same can be auctioned for IMT services."*

2.11. Recommendations issued by TRAI in respect of refarming and harmonization of frequency range are relevant to consider in this regard, as such steps may provide additional spectrum for IMT bands which can thereafter be used for public uses as well.

2.12. ITU has also recognized that spectrum refarming or redeployment may improve existing services or introduce new services by moving existing users of radio spectrum to more modern technologies or new frequency bands. In this regard, ITU has also suggested that it is important to incorporate spectrum redeployment in the administration's national spectrum strategy together with the mechanisms identified to assist implementation of redeployment. [12]

2.13. In terms of types of spectrum redeployment, ITU referred to the following methods which may be considered[13]:

2.13.1. Voluntary spectrum redeployment: In this type of model, the regulatory authority implements spectrum redeployment on a voluntary basis. In other words, this typically involves use of methods to encourage an existing spectrum user to voluntarily decide to return the frequencies used to the regulatory authority for re-assignment. While this provides more choice to the existing users of under-utilized bands, this process is found to be more time-consuming.

2.13.2. Regulatory spectrum redeployment: In this case, the regulatory authority would typically terminate the license or refuse to renew the license, and devise a new policy for refarming of spectrum. This also comes with various technical challenges as waiting for expiry of licenses can be very time consuming and early termination may cause inconvenience to users.

2.14. In our view, the voluntary spectrum redeployment model appears to be the most feasible option for India and allows greater flexibility to telecom licensees as well as users. The policy consultation on this aspect may be carried out separately after identifying and monitoring of statistics on use of different frequency bands.

2.15. In the past, GSMA has also suggested that it is prudent to *inter alia "Clearly set out and agree on the approach to refarming and renewal in advance (preferably at least 3 – 4 years prior to expiry) to avoid network investment being postponed"*, *"Progressively remove service and technology restrictions in existing mobile spectrum usage rights"* and *"Introduce flexible regulatory tools, such as spectrum trading and sharing, to facilitate*

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[12] Recommendation ITU-R SM.1603-2 (08/2014) on *'Spectrum redeployment as a method of national spectrum management'* issued by the International Telecommunication Union, page 2

[13] Recommendation ITU-R SM.1603-2 (08/2014) on *'Spectrum redeployment as a method of national spectrum management'* issued by the International Telecommunication Union, section 3.2

better spectrum utilisation"[14]. Accordingly, the foregoing approach may also be borne by DoT with a voluntary spectrum redeployment model.

Recommendation

We recommend that DoT should come out with a plan for refarming unutilized frequency bands to ensure optimum usage for IMT and 5G services. In this regard, DoT may consider a voluntary spectrum redeployment model as advocated by ITU and GSMA in the past.

Spectrum allotment across different license layers

2.16. In terms of the current framework, allocation of spectrum is delinked from the licence, and it has to be obtained separately as per the prescribed procedure, for different services. The 'service delivery' layer encapsulated under the UL-VNO regime does not permit assignment of spectrum to VNO licensees.

2.17. In view of the recommendations issued by TRAI on '*Enabling Unbundling of Different Layers Through Differential Licensing*' on 19 August 2021, we note that TRAI has *inter alia* recommended that a separate authorization under Unified License may be created for Access Network Provider (network layer) to provide network services on wholesale basis. In this regard, TRAI has also recommended that such Access Network Provider may also acquire spectrum. We refer to the following section in this regard:

> *"2.54 Like Unified Licensee with access service authorization, the Access Network provider should also be permitted to acquire access spectrum and the terms and conditions should be same as that applicable to Unified Licensee with access service authorization i.e. as specified in the relevant Notice Inviting Application (NIA) for spectrum auction and the License Agreement. Further, the existing guidelines for spectrum sharing and spectrum trading should be suitably modified to permit spectrum sharing and spectrum trading between the Access Network Provider and the Unified Licensee with access service authorization. It would also have access to backhaul spectrum, numbering resources, right to interconnection, etc. Since the provision of service completely depend on the underlying network, the Access Network provider should be responsible for all the network related terms and conditions specified in the Access Service Authorization under Unified License. However, since Access Network Provider is not permitted to provide services directly to the end customers under this authorization, while creating the authorization chapter for Access Network Provider, the terms and conditions related to service delivery should be excluded."*

2.18. If DoT is envisioning devising an additional license layer for Access Network Providers, we concur with the views of TRAI that such Access Network Providers should be able to acquire

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[14] Presentation on 'How to implement Spectrum Re-Farming' by Shola Sanni, Senior Policy Manager, Africa, GSMA <https://www.gsma.com/spectrum/wp-content/uploads/2017/11/10-Day-2-Session-3-How-to-Implement-Spectrum-Refarming-Shola-Sanni.pdf>

spectrum and thereafter share, trade and / or lease spectrum on a wholesale basis to service delivery operators. This may benefit entities who are unable to acquire spectrum themselves in the auctions by allowing them an option to receive network from such Access Network Providers on a whole-sale basis and thereafter offer their services to end customers.

Recommendations

We recommend that DoT should create an additional license layer or otherwise permit network providers to share, trade and / or lease spectrum on a wholesale basis to service delivery operators. In this regard, DoT may also suitably modify existing guidelines for spectrum sharing and spectrum trading to permit such spectrum sharing and trading arrangements.

3. *Right of Way*

3.1. The launch of the centralized RoW portal, the *'GatiShakti Sanchar'* portal, by the DoT is a commendable feat, especially with 35 states and union territories already onboarded.[15] However, the current framework for obtaining RoW permissions may be simplified further in terms of sharing of ducts, payment of RoW charges and with respect to RoWs pertaining to remote villages and locations.

Recommendations

The government's *'National Broadband Mission'* and many initiatives under the Universal Service Obligations are much appreciated, especially for connecting extremely remote and difficult locations to the telecommunications network. Additionally, to provide an incentive to telecommunications service providers and IP-I entities to establish telecommunications infrastructure at remote locations, RoW charges for certain designated areas may be exempted.

Pertinently, telecommunications service providers and IP-I entities make heavy expenditure to set up telecommunications infrastructure. While the RoW is granted by the respective authorities for the establishment of such infrastructure, there is also a need to ensure that any damage to such infrastructure by third parties (due to strikes, agitations, etc.), by providing a penalty (either civil or criminal) under the proposed laws and regulations, so that the damage caused to telecom infrastructure can be made good and investments made by IP-I entities and telecom service providers ("**TSP**") can be safeguarded.

4. *Framework for mergers, acquisitions, etc.*

Approval requirements

4.1. The framework for mergers and acquisitions in the telecom sector is currently governed by the *'Guidelines for Mergers & Acquisitions, 2014'* ("**M&A Guidelines**") issued by DoT read with relevant telecom license conditions.

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[15] "About us", GatiShakti Sanchar Portal; GatiShakti Portal (sugamsanchar.gov.in)

4.2. In terms of the current Consultation Paper, we note that DoT is aiming at "*simplifying the framework for mergers, demergers and acquisitions, or other forms of restructuring*" which may be achieved by a new law / framework allowing entities to comply with the scheme for restructuring under the Companies Act, 2013 (as amended) and simply inform the DoT as required.

4.3. Notably, such a regime as envisioned in the present Consultation Paper may remove various regulatory burdens which entities have been facing pursuant to the M&A Guidelines. In its recommendations on '*Reforming the Guidelines for Transfer / Merger of Telecom Licenses*' dated 21 February 2020, TRAI noted that some clauses of the M&A Guidelines appear to have become redundant and some clauses "*have been noticed to be ambiguous and demand clarity*".

4.4. The M&A guidelines stipulate the requirement to notify DoT "*for any proposal for compromise, arrangements and amalgamation of companies as filed before the Tribunal or the Company Judge*", basis which DoT may provide some representations or objections. If such scheme has been sanctioned by the National Company Law Tribunal (**"NCLT"**), thereafter DoT may provide its written approval within 30 days of receipt of request for approval to the transfer / merger of licenses / authorizations under Unified License.

4.5. This additional layer of approval creates dual requirements for telecom licensees to approach both NCLT and DoT which results in delays and time-consuming proceedings. In this regard, various stakeholders have earlier also submitted that as the framework under the Companies Act enables regulatory authorities to raise objections in the NCLT process for approval of scheme, an additional layer of approval by approaching DoT thereafter is not necessary.

4.6. Additionally, after the sanction of the scheme by NCLT, telecom licensees are required to complete transfer / merger of various licenses in different service areas within one year from such approval. In the past, entities have raised concerns that in case of litigation pendencies on account of which the final approval of a merger is not being granted by the DoT or any other authority should be excluded while calculating the aforesaid period of one year.

Recommendation

We concur with the views of DoT in the Consultation Paper to simply the regime for mergers, demergers and acquisitions, or other forms of restructuring in the telecom sector by allowing entities to comply with the scheme for restructuring under the Companies Act, 2013 (as amended) and simply inform the DoT as required. In this regard, TRAI's recommendations cited above provide helpful guidance and can be adopted by DoT in the manner discussed above.

Demands for clearance of dues

4.7. It is also important to note that DoT, in its letter dated 11 June 2019, has noted that in merger proposals, many entities have filed petitions before the Telecom Disputes Settlement and Appellate Tribunal (**"TDSAT"**) to quash and set aside certain conditions imposed upon them by DoT in terms of *inter alia* paragraphs 3(i) and 3(m) of the M&A Guidelines. TDSAT has on several occasions has granted stay to the operation of some of such conditions which has resulted in some delays in mergers being taken on record.

4.8. In particular, the conditions relating to clearance of dues has been found to be quite cumbersome and leads to significant delays in merger process. In this regard, we refer to the following stakeholder considerations summarized by TRAI in its recommendations on '*Reforming the Guidelines for Transfer / Merger of Telecom Licenses*' dated 21 February 2020 (**"M&A Recommendations 2020"**):

> *"2.64 One stakeholder has submitted that as per clause 3(m) all demands, if any, relating to the licences of the merging entities, are required to be cleared by either of the two licensees before issue of the permission of merger / demerger. Currently, DoT seeks the clearance of dues both at the time of in-principal and final merger approval. The whole process of clearance of dues is quite cumbersome and leads to significant delays in merger process. The following have been proposed by the stakeholder:*
>
> *(i) The DoT should not insist for clearance of outstanding dues for both the Transferor Company and the Transferee Company given that all liabilities are being transferred to the Transferee company;*
>
> *(ii) If the dues are to be cleared as well, the same should be for a fixed date on which the dues are required to be cleared and that should be prior to the final approval of the merger by the NCLT;*
>
> *(iii) A consistent definition of sub-judice matters be stated so that the merging entities are not forced to approach the Court for matters that are sub-judice but interpreted differently;*
>
> *(iv) All objections of the DoT are raised once and not at multiple occasions."*

4.9. Notably, TRAI in the M&A Recommendations 2020 ultimately did not find merit in these submissions. However, as acknowledged by DoT itself in its letter dated 11 June 2019, there have been some delays caused due to TDSAT proceedings in relation to demand for outstanding dues. We concur with the stakeholder suggestions that this provision should be revisited in line with the foregoing submissions to simplify the approval process.

4.10. Additionally, in relation to paragraph 3(i) of the M&A Guidelines, we note that DoT in its response to the M&A Recommendations 2020 has suggested an amended language to *inter alia* address the issue of payment of market determined price for administratively allocated spectrum held by the transferor company. However, the said clause also provides the following in relation to demands for one time spectrum charges ("OTSC"):

> *"In case the demands raised for one time spectrum charges in respect of the spectrum holding beyond 4.4 MHz in GSM band / 2.5 MHz in CDMA band before merger in respect*

> *of transferor company have not yet been paid and are under judicial intervention, the Department shall revise such demands keeping the end date as the date of written approval to the transfer / merger of licenses by DoT. At the time of merger, the transferee company shall submit a bank guarantee for an amount equal to the revised demand for one time spectrum charge in respect of the transferor company pending final outcome of the court case.*
>
> *However, while raising the demand for bank guarantee for one time spectrum charges in respect of the transferor company, the Department shall calculate a tentative demand keeping the end date as the date of NCLT's approval to the merger scheme. The Transferee company shall submit a bank guarantee equivalent to the tentative demand for one time spectrum charges in respect of the transferor company to the Department.*
>
> *Upon grant of written approval of the transfer of license by DoT, the actual demand for one time spectrum charges in respect of the transferor company shall be recalculated based upon the date of grant of approval. At this stage, the transferee company shall submit a fresh bank guarantee equivalent to the actual demand for one time spectrum charges in respect of the transferor company to the Department. Upon submission of the fresh bank guarantee, the bank guarantee (equivalent to the tentative demand for one time spectrum charges in respect of the transferor company) submitted earlier by the transferee company will be returned back."*

4.11. In this regard, we refer to the following section from the M&A Recommendations 2020 issued by TRAI:

> *"As already discussed, in the earlier era, when spectrum was bundled with the licence, the TSPs were assigned the initial spectrum (4.4 MHz/2.5 MHz for GSM / CDMA) along with the licence against the entry fee paid and the additional spectrum was assigned to them based on the subscriber-linked criteria; however, no price was charged from the TSPs for such additional spectrum. Therefore, through its order of 2012, DoT Ordered the TSPs to pay up the price for additional spectrum assigned to them, retrospectively, and this price was termed as OTSC. The TSPs (separately) challenged this order of DoT in High Court(s) as TDSAT was not functional at that time. Some of these petitions were preferred to TDSAT by the High Court(s). In some of these petitions, TDSAT has given its Order and DoT has challenged the TDSAT Order in Supreme Court, which has granted interim stay on the TDSAT Order. The matter is sub-judice."*

4.12. As also noted by TRAI in its subsequent recommendations on this dated 27 November 2021 (**"M&A Recommendations 2021"**), the amended suggested text of paragraph 3(i) (in so far as it relates to OTSC) should be re-examined as the matter on this issue is still sub-judice. We concur with this suggestion and request DoT to consider the recommendations of TRAI in this regard.

Recommendation

We request DoT to re-consider the conditions relating to clearance of dues and affix a fixed date as of which the dues are required to be cleared which should be prior to the final approval of the merger by the NCLT. We also request DoT to clarify the scope of and consider exemptions for sub-judice matters such as demands for OTSC.

5. *Provisions pertaining to Insolvency*

5.1. Insolvency & Bankruptcy Code 2016 ("IBC") is the legal framework that governs corporate insolvency resolution process ("CIRP") in the telecom sector in India. While the IBC stipulate a time bound resolution process (330 days being the maximum time limit in which the CIRP is required to be completed), the CIRP of the debt laden telecom companies like Aircel and Reliance Communications have dragged on for years.

5.2. In view of the Consultation Paper, we understand that DoT has envisaged a new law to address the prevailing insolvency related issues in Indian telecom sector which focuses on continuity of service as long as: (a) there is continuity in telecom services being provided by the telecom operators; and b) there is no default in payment of dues pertaining to the telecom license or use of spectrum.

5.3. DoT has also noted that the new law addressing the insolvency issue of the telecom companies need to address situations where spectrum is not being put to use due to insolvency.

5.4. Considering the dire need of timebound resolution of CIRP proceedings of the telecom companies which has not been witnessed under the CIRP proceedings under IBC and the loss of money for the telecom sector in cases where spectrum is not being put to use due to insolvency, stakeholders in the industry have raised concerns over the same.

Recommendations

We concur with the views of DoT in the Consultation Paper to enact a law which aims at the continuity of service of the telecom companies subject to the requirements as stipulated above in paragraph 5.3 being met to ensure the revenue flow does not get disrupted for the concerned telecom company even when the insolvency proceedings have been initiated which will help the financial standing of the company in the time of insolvency and resolve the issue of unused spectrum which is making financial difficulties of the telecom sector even worse.

Additionally, in our view, the new law governing telecommunications in India should also promote resolutions of telecom related disputes outside IBC due to the critical functionality that the telecom sector plays in the economy. As per recent news reports and the data shared thereunder, in a number of insolvency cases (approx. 10%), lenders have agreed for a settlement outside IBC. Section 12 A of the IBC permits lenders to agree to a settlement outside the IBC which can prove to be a game changer in settling the pending telecom insolvency resolution processes.

6. *Expanding the scope of USOF*

6.1. The Universal Service Obligation Fund ("USOF") was set up in 2003 by the Indian government to speed up connectivity in rural and backward parts of the country. While it was set up with good intent for the spread of telecommunication service to the rural areas, the fund has been one of the major concerns for telecom companies. Notably, the TSPs have to contribute to the USOF out of their revenues.

6.2. In view of the Consultation Paper, we understand that DoT has proposed the concept of 'Telecommunication Development Fund' in lieu of the 'Universal Service Obligation Fund'. According to the Consultation Paper, the 'Telecommunication Development Fund' is aimed to address the larger purpose of:

   6.2.1. ensuring delivery of universal telecommunication service to underserved rural and urban areas,

   6.2.2. research and development of new technologies, and

   6.2.3. promotion of employment and training activities.

6.3. It is also said that this fund can enable the growth of indigenous companies in the technology space.

6.4. Notably, various TSPs have raised concerns pertaining to levying of USOF as a part of their license fee. At present, the license fee is capped to 8% AGR, which is inclusive of USO levy of 5% of AGR. TSPs have time and again sought the scraping of USOF payments from the license fee. More than half of the license fee that TSPs pay goes towards USOF and adds additional burden to the debt-ridden telecom industry. It is unclear from the Consultation Paper how the Telecommunication Development Fund will be collected or whether it will be collected from TSPs as a part of their license fee.

6.5. Newspaper reports also suggest that the Indian telecom sector is heavily taxed, in comparison to many of the other Asian countries. Reports also indicate that there are large amounts unutilized USOF. This is particularly concerning since a huge amount of money is collected every year from TSPs for this purpose.

Recommendations

(a) Existing issues faced by the TSPs with respect to payment of USO charges must be taken into consideration. Pertinently, if the Telecommunication Development Fund is collected through the TSPs are a part of their license fee, then the charges may be reduced to 2% or a lesser percentage of the AGR, instead of 5%.

(b) Further, it must be ensured that the funds collected for telecom development are put to proper use. For this purpose, an independent body may be established that monitors the fair and proper use of the funds for the purposes set out.

7. *Penalties*

7.1. In view of the Consultation Paper, we note that the DoT has highlighted the penalties should be proportionate to offences. With this in view, a new law is required to consolidate and update the various provisions on penalties and offences under the license agreement.

7.2. Notably the conditions of the Unified License currently prescribe that a penalty upto Rs. 50 Crores per occasion per service area can be levied on access service, national long distance service, international long distance service and Global Mobile Personal Communication Satellite ("GMPCS") for any violation of the terms and conditions of the license. However, in absence of any guidelines distinguishing minor or major violations or the number of times any particular violation has been made by the TSP, often times maximum amount of penalty imposed by DoT for even the minor violations made for the first time has been hefty and unproportionate to the nature of offence.

7.3. TRAI had previously examined the issue of imposition of unproportionate penalties in its multiple recommendations which include '*Guidelines for Unified License / Class License and Migration of Existing Licenses*' dated 16 April 2012 and recommendations on '*Terms and Conditions of Unified License (Access Services)*' dated 2 January 2013. TRAI concluded that it is not the kind of license but the nature of violation that should be the criteria to identify the amount of penalty. It further highlighted that the quantum of penalty should be depended upon the number of times a TSP has violated the license conditions. Accordingly, TRAI recommended that the penalties should be imposed keeping in consideration the nature of violation (i.e. a minor or major violation) and the number of occurrences of such violation. An inference can also be made to the quantum of penalty recommended by TRAI under its recommendation dated 2 January 2013 mentioned above:

Number of violations	Minor violation penalty	Major violation penalty
1st	1 Lakh	50 Lakh
2nd	5 Lakh	2.5 Crore
3rd	25 Lakh	5 Crore
4th	25 Lakh	10 Crore
Subsequent violations	25 Lakh	Liable for cancellation of Licence

TRAI further reiterated its stand on the imposition of financial penalties in its recommendations on "Ease of Doing Telecom Business" dated 30th November, 2017 and inter-alia recommended that:

"DoT should devise a suitable matrix, linking the penalty to the severity of the incident and recurrence of the violation for imposition of financial penalties"

7.4. However, no such framework or matrix has been enacted as of now by DoT which is leaking a significant amount of money and affecting the financial standing of already financially distressed TSPs in India. Additionally, the quantum of penalty as prescribed in the license is Rs 50 Crores per occasion per service area for certain services which inter-alia include access service that makes the total amount of penalty to be paid in excess of Rs. 1000 crores for a pan India access service provider. As the penalty is set per service area, there could be potential scenarios wherein the same instance of non-compliance is reported in multiple service areas of a pan India operator as their operations and infrastructure are generally centralised leading to a heavy imposition of penalty on the concerned operator.

Recommendations

We recommend that the penalty provisions should be revised keeping in consideration the nature of violations (i.e. a minor or major violation) and the number of occurrences of such violations by the TSPs to ensure there is proportionality in terms of the imposition of penalties for violation of the terms and conditions of the license agreement.

Additionally, in case of access service providers, non-compliance which is common across multiple service areas, the amount of penalty to be levied should be for only one service area and not per service area.

8. *Standards, public safety and national security*

8.1. In view of the Consultation Paper, we note that DoT has suggested that the new law needs to address situations of public emergency, public safety, and take measures in the interest of national security.

8.2. DoT has also noted that such new law must prescribe relevant standards for telecommunications, including for telecommunication equipment, telecommunication services, telecommunication network, and telecommunication infrastructure.

8.3. Given the widespread use of telecommunications, whether for education, or entertainment, or tele-medicine, or facilitating e-mandis, DoT has emphasised that such new law must ensure public safety.

8.4. *Standardization*: Telecommunications Standards Development Society, India ("TSDSI") is an industry led not for profit organisation recognised by DoT as National Telecom Standards Development Organisation ("SDO"). TSDSI's mandate is to reflect India specific requirements in various global standards forums so as to ensure addressing of these requirements in global standards, including in upcoming 5G technologies. TSDSI also provides a platform to its members, drawn from industry (operators, manufactures, designers, system integrators), academia, R&D, user groups, Government and policy /

regulatory bodies to develop and contribute their innovations / IP nationally as well as at global platforms like 3GPP, ITU etc.

8.5. In relation to standardization, TRAI had noted in its consultation paper titled '*Privacy, Security, and Ownership of the Data in the Telecom Sector*' dated 16 July 2018 (**"Consultation Paper on Security of Data"**) that "*encryption is an important aspect for ensuring the safety and security of the content. In case of the TSPs, use of bulk encryption as well as deployment of high order encryption standards has been prohibited. Since the TSPs provide connectivity to various entities in the ecosystem, the robustness / strength of the data protection is dependent upon the encryption standards used by each entity. Presently, non-uniform encryption standards are being followed by various sectoral regulators.*" Thus, there is a need to harmonize the standards used for telecommunication across various sectors within India as well as make it consistent with the international standards for encryption.

8.6. *Public safety and national security*: Telecommunications being an essential service, it is crucial for government to put in place measures to protect national security and public safety. TRAI has also noted in its Consultation Paper on Security of Data that *inter alia*, measures need to be considered to strengthen the safety and security of telecom infrastructure and the digital ecosystem as a whole.

8.7. Further, there are several existing provisions under the license terms with respect to the requirement to ensure protection of privacy of communication and prevention of unauthorized interception of messages. Licensees providing telecommunication services are also required to ensure lawful interception and monitoring, including installation of required lawful interception and monitoring systems of requisite capacities, provision of technical facilities and equipment for interception of messages by designated authorities, etc. In addition to this, there are also several executive programs such as Central Monitoring System (**"CMS"**) which require licensees to enable direct access of the network to the authorities for collection of information. Notably, there are ongoing proceedings which have challenged the constitutionality of such surveillance mechanisms. At present, it is unclear whether the new law will seek to replace these mechanisms or these will be integrated with further measures to protect national security and public safety.

Recommendations

(a) In addition to the standardization of telecommunications prescribed in paragraph 8.2 above, we request the DoT to also revisit the encryption standards stipulated under the license conditions. A set of standards may be followed for encryption of data so that it is aligned with the international standards as well as the requirements by other sectoral regulators within India.

(b) Any surveillance measures, including interception, monitoring and decryption measures prescribed under the law have adequate technical and procedural safeguards. Effective implementation of such safeguards must also be ensured by relevant officers. Such surveillance measures must only be undertaken when there is a real threat to national security. Records of such measures must be regularly maintained and to the extent possible, transparency must be ensured in terms of the number of surveillance orders issued.

(c) All data that is collected for surveillance purposes must be stored and maintained as per the prescribed standards under the law and must be deleted and destroyed when it is no longer required to be stored.

(d) Notably, the existing framework for protection of personal information / data is not sufficient in the present times, given the technological advancements and potential harm that could be caused to telecom consumers in case of any data breach. Until a comprehensive legal framework on data protection in India is notified by the Government of India, the current law must be made applicable in case of telecom services and strict implementation and enforcement must also be ensured.

9. *Other Recommendations*

9.1. While the Consultation Paper has been introduced at a very opportune moment, it cannot be denied that a larger overhaul of the telecom regulatory framework will require more time and deliberation before it sees light of the day. In view of this, we wish to highlight a few aspects that may require immediate action.

9.1.1. *Amendments to existing license conditions*: The license terms have to be regularly amended in line with the changes in the telecom regulations and guidelines:

(a) For instance, the *'Revised Guidelines for Other Service Providers'* dated 23 June 2021 ("**OSP Guidelines**") have done away with the requirement for OSPs to obtain a registration with the DoT and has proposed a self-regulation mechanism. However, the definition of *'Other Service Provider'* ("OSPs") under the Unified License agreement still reads as an "*Indian company registered with DoT to provide application services like tele-banking, telemedicine, tele-education, tele-trading, e-commerce, Call center, network operation centre and other IT enabled services by using telecom facilities provided by various telecom licensees*". Notably, the regulatory changes carried out by way of such guidelines and other regulations have not been reflected in the license terms. This gives rise to many regulatory inconsistencies and ambiguities while interpreting the law. In practical terms, some TSPs continue to seek copies of registration certificate and network diagrams, along with representations and warranties for compliance with the preceding OSP guidelines. Thus, the license terms must be updated and amended for consistencies with such developments under the telecom regulatory framework.

(b) Further, the license terms also stipulate that there is no restriction on the number of VNO licensees per service area. Particularly, "*VNOs are allowed to* *have agreements with more than one NSO for all services other than access service and such services which need numbering and unique identity of the customer."* It appears that there is a grey area due to lacuna in the drafting of this provision. Based on this verbiage, there is a blanket restriction that VNOs cannot have agreements with more than one NSO for AS authorisation VNOs are allowed to have agreements with more than one NSO for all services, except access services. As a result, all services under the AS authorisation may be covered by this restriction, even though there is no element of numbering or unique identity of customer (like in the case of audio conferencing or even internet access services). DoT may consider amending the license terms to give clarity to this interpretation.

9.1.2. *Consolidated copies of the license agreements, guidelines, directions, regulations, orders, etc. incorporating amendments*: We note that often when amendments to telecom licenses, guidelines, directions, regulations, orders, etc. of DoT and TRAI are issued, the amendment notification is issued in isolation and not incorporated / consolidated with the relevant document. As and when any amendments are issued, we request DoT and TRAI to consider issuing consolidated copies of such legal documents including *inter alia* telecom license agreements, guidelines, directions, regulations, orders, etc., incorporating the relevant amendments for ease of convenience for the industry at large. This will also significantly aid in simplifying the regulatory regime as stakeholders will be able to access the composite copies.

9.1.3. *Pending clarity on cloud:* There is not much clarity regarding DoT's overall stand on cloud services and infrastructure. In today's day and age, many service providers are opting for infrastructure that is hosted on cloud but license conditions relating to inspection and audit, location of applicable system, etc. pose a challenge in this regard. It is important to address this anomaly while rapid change in technology is taking place. On a related note, TRAI had also released recommendations on cloud services dated 14 September 2020 in which it proposed an industry-led body for the regulation of cloud service providers. However, as of date, there has been no development on this front. In light of the emerging trends and technological developments, it is pertinent to have an appropriate framework dedicated for the regulation of cloud service providers.

9.1.4. *Need of clarity on computation of license fees*: Additionally, we note that the recent telecom reforms introduced the concept of 'Applicable Gross Revenue' ("ApGR"). According to the license terms, ApGR shall be equal to the Gross Revenue of the licensee as reduced by certain components, including *inter alia*, revenue from operations other than telecom activities / operations. In the absence of any definition or express guidance on what constitutes *"revenue from operations other than telecom activities / operations"*, it is unclear how the ApGR can be calculated. Hence, it is pertinent that DoT issues clarification or amendment in the license terms to iron out this ambiguity.

9.1.5. *Issuance of periodic guidance and white papers:* Lastly, authorities in countries such as European Union regularly issue working papers, discussion papers, recommendations etc., that provide regulatory clarity and practical insights on the law. This is very helpful for regulated entities to ensure compliance under the law. Further, lack of such regulatory clarity also becomes a disincentive for many of the new player to enter into this highly regulated industry. Hence, in addition to aiding the existing entities to interpret and comply with the law, such documents issued by the regulatory authorities from time to time can also play a pivotal role in encouraging new telecom players to enter the market.

We are hopeful that DoT will appreciate the concerns raised by us and take a favourable view in respect of our submissions. The focus of the current Government is to create a hospitable environment for industry to prosper, and a reconsideration of the current telecom legal and regulatory framework with the digital and technological evolution.

DISCLAIMER: Please note that the comments and suggestions hereinabove are the personal views of the individuals mentioned below in their personal capacities, and do not express the views or should not in any way be deemed to be the views of Khaitan & Co.

In case of any queries or comments on the responses above, please feel free to reach out to the individuals mentioned hereinbelow:

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Need for a new legal framework governing Telecommunication in India

From : hrskumar@gmail.com Sun, Aug 07, 2022 03:54 PM
Subject : Need for a new legal framework governing Telecommunication in India
To : Naveen Kumar <naveen.kumar71@gov.in>

Dear Naveen,

I work for a USA based Telecom Provider and I currently manage a global team of technologists in the areas of 5G Planning and Deployment.

I came across the invitation to comment on the consultation paper on Need for a new Telecom framework governing Telecommunications in India. Having worked in the Telecom sector in the USA for over 20 years as a technologist, I am confident that I can contribute to several areas of the initiative including Planning, Simplification of Regulatory frameworks, Modernizing the Technology and Infrastructure and most importantly creating a framework that's future proofed.

I know I have until 25th of August to complete my feedback to you in this regard. I know you may have received overwhelming responses to the request from professionals all over the world. If you can send me a quick acknowledgement for this email and let me know if there is a **specific area** where I should focus more in my consultation response, that would help me immensely in formulating a response.

I am looking forward to hearing from you.

Yours sincerely,
Satish Hosanagara, MS & MBA
17 Ramapo Drive
Basking Ridge, NJ USA 07920
Phone (201)407-4684
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Comments on Consultation Paper on New Legal Framework governing Telecommunications

From : newdheep@gmail.com Wed, Aug 10, 2022 02:55 PM

Subject : Comments on Consultation Paper on New Legal Framework governing Telecommunications

To : Naveen Kumar <naveen.kumar71@gov.in>

Respected Sir,

With respect to the proposed legal framework, it is submitted that a systematic public communication strategy may be prepared and implemented in order to obtain public communication inputs and incorporate public communication considerations in the design of the framework as well as in its implementation, so that the public in general and each stakeholder group in particular are well aware of the various policy choices made as well as the rationale for them.

The public communication expertise of Indian Information Service officers of the Ministry of I&B may be tapped for the same.

Warm Regards,
Dheep Joy Mampilly
Batch of 2012, IIS
+919582675954

Comments - Regarding Consultation Paper on 'Need for a new legal framework governing Telecommunication in India'

From : dl@livefibernet.com Fri, Aug 26, 2022 01:46 PM

Subject : Comments - Regarding Consultation Paper on 'Need for a new legal framework governing Telecommunication in India'

To : Naveen Kumar <naveen.kumar71@gov.in>

Dear Sir,

We welcome your effort towards the need for a new legal framework. It will be beneficial for everyone of us to progress in this field and enhance digital governance in India. We will support you full fledged in the development of the new legal framework.

Thanks and Regards,
Ramya Priya Rajendran
Team Live Fibernet.

Reliance Jio's inputs on Consultation Paper on 'Need for a new legal framework governing Telecommunication in India'

We are thankful to the Department of Telecommunication ('DoT') for seeking comments on **"Need for a new legal framework governing Telecommunication in India"**. For consolidating inputs of the stakeholders in a comprehensive and specific manner, we are of the view that inviting comments on a 'draft bill' would have been a more effective method. We are hopeful that in the near future DoT will publish a draft bill also for inviting comments. We hope that this suggestion will merit for your kind consideration for implementation.

Our comments on various issues mentioned in the consultation paper are as follows:

A. Need and Scope of the New Law:

In respect of the telecommunication sector, it is submitted that the present laws governing telecommunications in India have allowed the technology to move from Manual Telephone Exchange and Open Wire Carrier Systems to Digital IP based soft switches and Optical fibre system enabling 4G / 5G and beyond technologies. The current framework has enabled new technology introduction through various categories of Service Providers and Infrastructure Providers. The expansion and upgradation of telecommunication services have made possible the proliferation of digital payments, and e-services across the country benefitting the common man. All this have been possible without enacting a new law. While we have achieved this progress under the extant legal framework, we welcome the Government's approach of updating the legal framework to expand the horizons for empowering development of converged digital sector in the medium and long term.

I. We submit that the new legal framework should be forward looking and should address the needs of various technological advancements such as 5G/IoT for digital services including telecommunication connectivity, carriage of broadcasting content, Over The Top communication services that are provided using any technology/network be it terrestrial or non-terrestrials networks including satellite based communication networks.

II. The new legal framework should foster efficiency, agility, transparency, inclusiveness, regulatory certainty and eliminate the concept of discretionary powers and should prepare the country to meet all technological developments and adoption in the current and next millennia.

III. It is submitted that with the emergence of technological developments, IP based data services have become the primary driver to provide seamless services be it telecommunications, Broadcasting or other associated digital services, which hitherto used to be considered distinct from each other. The technological developments during the past 20 years have provided high speed data networks/Internet which has enabled the provisioning of communication and content service Over the Top (OTT). While all communications services including OTT services are at par with facility-based internet and communication provided by the licensed operators, the present licensing framework and regulation have not included OTT services in the licensing and regulatory regime till now. Therefore, we submit that **the new law should be comprehensive and encompassing all the relevant services and sectors including but not limited to terrestrial and satellite-based communication services, broadcasting services, Over the Top services (OTT), Cloud based services and other Digital services.**

IV. During the last 2 decades, the Indian telecom Industry has seen massive investments, in the magnitude of Rs 15 trillion, which have propelled India to be one of the leading countries in broadband penetration, adoption, and consumption of data. Further, the huge startup ecosystem in India has evolved on the back of digital/telecommunication infrastructure so created. **Therefore, it is extremely important that the new law should ensure effective regulatory certainty in order to continue attracting investments in the telecommunication infrastructure from both existing and new investors.**

V. We, therefore, are of the opinion that the outcome **of this Consultation Process should result in developing of converged law and regulation for telecommunications (both terrestrial and satellite communication), broadcasting and Digital and shall also address the legal and regulatory issues related to data privacy, data protection, data localization, cyber security and other security issues.**

B. Existing legislations, through evolution, have supported the rapid growth in the sector:

I. We submit that the telecommunication legislations in our country have evolved well over the years allowing healthy growth of telecom users in the country, with one of the most affordable tariffs across the world. The existing legislations have allowed market forces to serve the best interest of the consumers and these features of the existing legislation shall be continued in the new legislation.

II. As mentioned in the Consultation Paper, Indian Telecom Sector has seen an unprecedented growth with the number of telecom subscribers growing at a phenomenal 19% CAGR over a period of 25 years from 1.5 Cr in 1997 to more than 117 Cr today, making India the second largest telecom market in the world. The expansion of telecom and digital services have been the driving force behind the proliferation of digital payments and e-services across the country for the benefit of the common man. This has happened owing to the timely intervention and amendment of existing legislations by the DoT, wherever required and framing of suitable regulations by the Telecom Regulatory Authority of India ('TRAI'), while following a transparent and consultative process with the stakeholders.

III. Further, the present legal and regulatory framework has allowed the sector to migrate from simple voice-based services to voice and data based fixed and 4G mobile services and upgradation to 5G technology is also at the verge of commercial launch with a vision for future technological advancements.

IV. In last couple of decades, the Indian telecom sector has undergone major transformations through significant policy reforms, supporting the exponential growth and making the Indian telecom market the second biggest market in the world. The prominent reforms include the following:

a. In 1994, Government opened the telecom service sector for private investments and ended monopoly with the introduction of competition.
b. The regulatory functions of DoT were hived off to an independent regulator, TRAI in 1997.
c. Technology neutral policy was introduced for mobile services in 1997.
d. Internet services were introduced with Internet services licenses issued in 1998
e. BSNL was carved out of DoT in 2000 for the separation of its policy functions and telecom operations
f. An appellate body TDSAT was formed for dispute resolution as TRAI Act was amended in 2000
g. In 2000, the telecom infrastructure industry came into existence with DoT inviting applications for IP-I registrations and IP-II licenses.
h. In 2003 under the NTP 1999, DOT introduced the Unified Access Service licenses with licenses being technology neutral
i. During the period 2006 to 2011, more choices were brought in for consumers in terms of technology and services including allowing Internet, Internet Telephony and IPTV service under the existing Access Service license.
j. In 2012 DoT issued a Unified license under NTP 2012 which included delinking spectrum from the license, hence moving towards convergence between various telecom services, networks, platforms, and technologies.
k. DoT came up with the auction of the 3G/BWA spectrum in 2010 and Pursuant to the Supreme Court order in 2012, the spectrum auction became the only mode for spectrum allocation.
l. To fulfill the information and communication needs and unlock the transformative power of digital communications networks, The National Digital Communications Policy, 2018 was introduced.

V. While above mentioned amendments/policy intervention/regulations were done, it did not warrant a complete overhaul of the existing law/policy framework. Further, these amendments ensured that the core principles of the regulatory framework; viz. level playing field for players, protection of consumer interest, policy and regulatory certainty and stability, technology neutral regime; were not altered. Further, these changes were significant in nature and changed the course of the telecom regime resulting in better services at affordable prices.

VI. Further, the evolution of the Indian telecom sector, through continuous modification of the legislations, has been in no manner lesser than the impact of newer legislations in other countries like the US.

Therefore, the new legal framework should be designed in such a manner to meet the new technological challenges arising out of the convergence of services/networks and to enable the growth of technology in a transparent and equitable manner, while protecting the Investor confidence in the sector. Further, the law should resolve the issues, e.g. Right of way, impeding the development of Infrastructure.

C. Convergence of technologies requires a simplified and uniform regulatory approach

I. As aptly captured in the CP, we emphasize that the telecommunication is the backbone for India's rapidly shaping digital economy and is an enabler of digital governance that emphasizes data driven and people-centric delivery of goods and services to citizens and enterprises.

II. Communications infrastructure has evolved from circuit-based networks, in which individual applications (such as voice telephony) are tightly coupled to the transmission network, to Internet Protocol ('IP') networks, in which multiple applications ride on top of the physical (transmission) network layer. **Deployment of digital technologies has led to market convergence and 'intermodal' competition, as telephone, cable, broadcasting, wireless networks and OTT applications increasingly are able to offer voice, data, and video services over a single broadband platform using or without using the spectrum.**

III. However, because of the distinct regulatory regimes, services that are provided by different network technologies but compete with one another often receive **different regulatory treatment**. Owing to that, as mentioned above, we have a situation where **some domains are almost ungoverned** (like OTT applications), **while other are differently regulated** (like cable and broadcast service providers) when compared to telecom specific regulations. There are situations where **services (like IPTV) are governed by regulations mandated by DOT as well as the Ministry of Information and Broadcasting.**

IV. In addition, the emergence of new technologies such as 5G, 6G, Internet of Things, etc. among others is further leading towards **convergence of technologies and diminishing any difference between telecom and OTT communication players.** The advent of Edge computing, Cloud based services etc., and leveraging Artificial Intelligence and Big Data for providing newer services is leading to more and more convergence. **Such convergence is also creating pressing need for uniform policies from a data security policy perspective, viz. data protection, data sharing, data localization, data interoperability, creation of data sets and cooperation with Law Enforcement Agencies ('LEAs'), among others.**

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V. We foresee that in the future, telecommunication and broadcasting services will converge further along with various other digital services and be delivered as a unified service on the same platform as has already started to take place. DTH platforms are already delivering Value added services similar to ones delivered on the telecom platform/OTT. Further, network services are going to be mainly data-driven and IT-based empowering the IoT ecosystem.

VI. Thus, we believe that this is an opportune time for a comprehensive legal framework which shall aid in the development of new technologies in a converged era to boost investor confidence. The alignment with global best practices & simplification of the regulatory framework shall be aimed to establish universal / global benchmarks bringing in further improvement of regulatory certainty and provide safe ecosystems for investments made by several stakeholders across the sector.

VII. Therefore, the new telecommunication law should converge all the four critical branches of the telecom sector and address the needs of the terrestrial and satellite communication, broadcasting and IT sector comprehensively.

D. Simplification of the regulatory framework

I. We are supportive of the regulatory principles mentioned in the CP and are of a strong view that they are cardinal part of any legislation to govern the sector. Although we submit that these are already existing in the current legislations owing to continuous evolution of the Indian telecom regulatory framework and should be included in the new legislation without altering their character and important to ensure regulatory continuity.

a. The exclusive privilege of the Central Government to do things necessary in the context of telecommunication to provide telecommunication services, establish and maintain telecommunication network and infrastructure is the fundamental principle in the existing laws.

b. To enable investments, the law already provides the framework for various players in the telecom value chain like service providers, infrastructure providers, etc.

II. It is rightly captured in the CP that any new law needs to ensure that the terms and conditions will not be modified with retrospective effect to the detriment of relevant entity. It is submitted that while the terms and conditions of the new law may not be detrimental to the relevant entity but at the same time, such terms and conditions should also not dilute any obligation of the relevant entity in terms of payment of government dues which inter-alia include license fees, SUC, OTSC, penalties etc. Such dilution will amount to giving undue benefit to an entity and create a non-level playing field for other players who have complied with their obligations for government dues. It will not be out of context here to mention that this non-dilution principle was followed by the Central

Government at the time of offering a migration package in 1999, which stood the scrutiny of courts.

III. It will not be out of context to mention here that earlier the Government introduced the Communication Convergence Bill to enact a law with this approach in 2001 which lapsed in 2004. **A similar approach can be envisaged having one law, one Regulator, one Licensor and one Tribunal for all the related sectors for "Ease of Doing Business".**

IV. Further, to ensure continuous upgradation of technology for providing new services and facilities, any **new law should facilitate infrastructure development** rather than encouraging unregulated or under regulated OTT players as it leads to fragmentation of revenue resulting in sickening of the sector followed by relief packages.

V. Consequently, the **new law should be comprehensive, and deliver on the convergence of services and sectors** i.e. telecommunication (terrestrial & satellite), broadcasting platforms and IT/Cloud based services, and OTT platforms, while simultaneously ensuring regulatory certainty to incentivize investments required for the creation of digital infrastructure in the country.

VI. **The new law should be transparent and easy to interpret** with no possibility of multiple interpretations. It should be **progressive and inclusive** in the true sense of the word and **should avoid any discretionary powers**, at any and all levels, that can have the potential of being inappropriately used in the future. If the Administrative Authority is entrusted with any such discretionary power, the possibility of creating unreasonableness and biases with malafide intentions by using such powers cannot be ruled out. **Therefore, the statue should not contain any discretionary powers with the administrative authority.**

VII. Furthermore, the proposed Act **should include precise definitions and terms that are not vague.** To ensure long-term Regulatory Certainty and a level playing field for orderly growth of the sectors, it must have proper checks and balances and **not give unbridled power to the executives.**

To summarize:

a) The telecommunication sector has done exceptionally well within the extant legal framework. Although the issues outlined in the present consultation can also be addressed within the existing legal framework, **a new legal framework is welcome as this can address the forward-looking convergence related issue by converging all the** four critical branches of the telecom sector and address the needs of terrestrial and satellite communication, OTT services, cloud based services, broadcasting and IT sector comprehensively.

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b) The following provisions may kindly be considered in the new converged law:

- **The central government should continue to have** exclusive powers for providing telecommunication services, establish, maintain, or work upon telecommunication network and infrastructure.
- It should be comprehensive in the true sense and **encompassing all converging services and sectors** including but not limited to terrestrial and satellite based communication services, broadcasting services, OTT, Cloud based services and IT.
- The law should **facilitate investments** and **deliver regulatory certainty and predictability** to support national aspirations and goals.
- It should be **transparent and easily comprehensible** and should be **devoid of any discretionary powers**, at any and all levels, that has the potential of being inappropriately used in the future.
- All Definitions or terms of the proposed Act should be **precise and not vague.**
- To ensure long-term regulatory certainty and a level playing field for orderly growth of sectors, it must have **proper checks and balances and must not give unbridled powers to the executives.**
- **It should comprehensively cover data privacy** and **security policy perspective**, viz. data protection, data sharing, data localization, data interoperability, creation of data sets and cooperation with Law Enforcement Agencies ('LEAs'), among others.
- to ensure continuous upgradation of technology for providing new services and facilities, any new law should **facilitate infrastructure development** rather than encouraging unregulated or under regulated OTT players.
- while the terms and conditions of the new law may **not be detrimental to the relevant entity** but at the same time, such terms and conditions **should also not dilute any obligation of the relevant entity** in terms of payment of government dues which inter-alia include license fees, SUC, OTSC, penalties etc.

E. Spectrum Management

I. India has, over time, moved away from the subjective administrative assignment to a market-based auction mechanism to assign spectrum. Compared to the past, the spectrum management regime in India has become much more flexible and these measures largely contribute to address the twin problems of transparency and scarcity of spectrum in the market for telecom players.

II. While the year 2010 represented a watershed moment in initiating auction-based spectrum management policies in India, **we submit that the current spectrum allocation policy in India is as per the policies of the DoT and is not ruled by any court order.** Hence, we submit that spectrum assignment is not being done through a combination of policies and court orders, as presented in the CP. We submit that, with the shift from the administrative assignment of spectrum to online auction-based spectrum assignment designed to discover a market price has allowed efficient use of spectrum, ensure transparency, avoid hoarding, stimulate competition and promote the roll out of newer technologies. Hence all spectrum assignments including for terrestrial communication, microwave access & backhaul, broadcasting and satellite communication should be continued to be done only through auction-based spectrum allocation.

III. While we are supportive of the proposed target principles for spectrum management in CP, we submit that the below mentioned principles are already in place and effective under the current auction-based spectrum allocation policy of DoT and should be incorporated on 'as is' basis in the new Act.

  a. Enable the efficient utilization in a liberalized and technologically neutral manner and allow the spectrum assignee to deploy the new technologies. The introduction of 4G technology by the service providers in all the bands is an example of this.

  b. Maintain policy continuity, allowing the existing spectrum (and exemptions) assigned at present to continue for a specified time period.

  c. The administrative allocation of spectrum for Government agencies such as police, defence, fire, airport authority, for honouring international conventions

IV. There is no need for any statutory permission for sharing, trading or leasing of the spectrum. It was prohibited by license/ assignment/authorisation provisions and can be addressed administratively.

V. The existing spectrum policy also allows for Government to retain the rights to do the repurposing of a frequency range for a different use and re-arrangement of a frequency range for efficient use of spectrum as a part of the administrative process. Hence the same need not be incorporated separately in the new legislation.

VI. On similar lines, we submit that the spectrum for MWA/ MWB /E-band/ V-band /Satellite services should be allocated through a transparent auction process only and the administrative allocation of this spectrum cannot be termed fair or tenable. The market value of this spectrum is not known and the same should be determined through an auction process.

VII. De-licensing of spectrum in a band means the use of spectrum in these bands without any permission. No charge is levied for its use in case of delicensing and the Government waives its exclusive privilege without consideration although operators use it for commercial purposes and generate revenues from usage. Once someone has used it at a particular frequency at a spot, it can't be used by anybody else at that spot. This is nothing but "First-cum-First-Serve" (FCFS) policy which has been denounced by Hon Supreme Court in the 2G case. Thus, **alienating spectrum as a public good by delicensing should not be adopted since it does not conform to principles of transparency, public trust, realising public money, equality, means to ensure claim of worthy applicants** etc. as stressed by the Hon'ble Court and is against the orders of the Hon'ble Supreme Court that spectrum that spectrum is to be alienated only by auction apart from being violative of article 14 & 19 of the constitution.

VIII. We would also like to point out that the spectrum for captive networks (except Public safety networks) is like an input material for the production of final products. Such products are charged at a commercial rate and therefore **spectrum for such captive networks need not to be given administratively at a lower/nil price** as this amount to giving an indirect subsidy for the production of the said products. We submit that such a captive spectrum should be charged at commercial rates to maintain a level playing field.

IX. **We submit all the above-mentioned suggestions/inputs can be incorporated/served by making rules under Section 7 of the Indian Telegraph Act. However, as the new law will be replacing the Indian Telegraph Act, these should** be similarly issued under the new **telecommunication law. The new rules should** be very precise and should not allow any **misinterpretation to allocate spectrum administratively free of cost or at a low price.**

X. To summarise:

a) **Spectrum management requirements can be served by making rules under section 7 of the Indian Telegraph Act 1885. However, as this Act is to be replaced by new Telecommunication Law, these should be suitably incorporated without disturbing the status-quo.**

b) Further, the following provisions may kindly be considered under new converged law/rules:

- **All spectrum for commercial services/commercial use** such as access services/ MWA/MWB/E-Band/V-band/Satellite services **should be allocated through a transparent auction process only.**
- **Spectrum for Captive Networks will not be given administratively** at low price or free but be charged at commercial rates.
- **No present or likely commercial spectrum will be delicensed.**
- Spectrum for research institutions etc. be charged at commercial rates.
- **Allocation of spectrum for government agencies such as police, defence, fire,** airport authority and for **honouring international conventions be continued to** be done administratively.

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- The new rules should be very precise and should not allow any misinterpretation to allocate spectrum administratively, free or at a low price in the name of public interest.

F. Right of Way ('RoW')

I. We agree that an effective RoW is a pre-requisite to enable the expansion of telecommunication networks and improvement of telecommunication services in the country. Rather the below mentioned points in the CP have been a long-standing demand of the industry:

   a. A robust regulatory framework to obtain RoW in a uniform, non-discriminatory manner for the establishment of telecommunication infrastructure along with an effective dispute resolution framework relating to RoW. Implementation of the Central and State RoW policies must be enforced across all Local bodies. RoW for Telecom Infrastructure should not be the source of revenue generation for Municipalities / Local bodies but to be perceived as enabler for providing derived revenue generation opportunity through the gambit of services offered. RoW permissions for the telecom infrastructure rollout should be classified under essential services across Public and Private domains. Cost of RoW should be standardized in line to the Central Gazettes and all authorities must adopt the standard processes and procedures issued by the DoT for any telecom infrastructure rollout. Like Petroleum and Natural Gas Regulatory Board Act (PNGRB Act) and Petroleum and Minerals Pipelines Act (PMP Act), all Central Government Authorities such as Railways, NHAI, AAI, NTPC, CIL, SAIL, Port Trusts, Forest and Defence Cantonment must accept and follow DoT ROW guidelines for Telecom Infrastructure Development.

   b. Provisions for establishing common ducts and cable corridors in infrastructure projects to ensure integrated development of infrastructure shall not limit the Provider to lay specific last mile connectivity for its end users and facilities.

II. RoW permission is accorded under the overlapping regulatory ambit of multiple authorities and state/central establishments, viz. Municipal Corporation, State Governments and other central agencies such as NHAI, Indian Railways, AAI, Cantonment Boards, BRO etc. among others. We submit that the Government has taken big steps to address these issues vide amendment to ROW Rules dated 17th August 2022, however, a comprehensive solution to all RoW related issues can be achieved only through appropriate cooperation between above mentioned agencies and required amendments in the overlapping regulations; and making a provision in the Act alone may not be sufficient to deliver the desired results. Since beginning Autonomous Development Authorities in many states are not following the DOT policy and State's own Telecom policies hence a non-standard framework severely impacts the rollout in these areas. Therefore, **All States must ensure that, their local self-governing bodies (LSGB) and deemed development authorities (DA) shall follow the DoT ROW policy.**

G. Framework for mergers, acquisitions, etc.

I. We agree that there is a requirement for simplification of the process that allows the licensee to abide by the regulations under the Companies Act, 2013 and simply inform the DoT about the proposed merger/demerger/acquisition/restructuring. This will ensure that there are **no overlapping provisions related to the same in two parallel regulations.**

II. Although we submit that the same can be achieved simply by amending the existing provisions of the license and aligning the same with the Companies Act, nevertheless, the same principle should be followed in the new Law.

H. Provisions Pertaining to Insolvency

I. While we are supportive of the target of continuity of telecom services during insolvency, we submit that same is already broadly allowed and ensured under the existing regulations.

II. Insolvency proceedings do not lead to suspension or termination of the license/authorization if there is no default in payment of dues in relation to the telecom license or use of spectrum. We submit that subject to payment of current dues, the application of the current Insolvency and Bankruptcy Code ('IBC') does not lead to suspension or termination of any license authorization. Additionally, spectrum being an asset of a company, is not taken back by the government during the period of insolvency. **Hence the company is allowed to continue providing services using the spectrum during such period ensuring no inconvenience to the consumers.**

III. We submit that the established insolvency proceedings under IBC allow the required support for the beleaguered company to resurrect itself and the same has been put into practice after due deliberation. The IBC has an established procedure for addressing the liabilities of the company. Hence, **it should be ensured that in no situation any pending liability, viz. government dues should be written off through a statutory provision specifically for telecommunication sector under the guise of ensuring sufficient competition in the sector or in the public interest. For writing off any liability procedure prescribed under General Financial Rules 2017 may be followed.**

IV. Otherwise, it will lead to a non-level playing field and disadvantageous to the law-abiding companies being driven by competitive market forces. It will also encourage companies to default and lead to a situation where the government bears the burden of financial mismanagement of the company. It should also be ensured that the Government does not undertake or provide a guarantee on behalf of the company to allow the latter to secure finances as this will lead to the transfer of liability to the Government. Any financial incentive or administrative relief should be penned out detailing circumstances, amount, nature and methodology so that free competitive forces prevail equally in the sector and all the players can serve the best interest of the consumers.

I. Expanding the scope of USOF

I. We are supportive of the concept of overhaul the current Universal Service Obligation Fund ('USOF') with the wider concept of Telecommunication Development Fund ('TDF'). It is submitted that the new wider concept should continue to fulfil the current overarching vision of enabling rural Indians to participate in the nation development through a reliable and ubiquitous telecommunications network, in accessible and affordable manners. Now, with almost ubiquitous availability of services including in most of the remote and inaccessible areas, such Universal Access can be taken forward by its utilisation to facilitate migration of these customers to the newer technologies with required device ecosystem, to bridge the digital divide with demand led model. Further, the services can be made more affordable by lessening of the USOF levy or putting it in abeyance till existing unutilized large corpus gets fully utilised.

II. The USOF sites which are mapped under Forest land, District Collector / Divisional Conservator of Forest to allocate land under "Forest Rights Act", rather than going through 'Forest Conservation Act' procedure.

III. These measures can be further supplemented by disbursing the funds to the TSPs in a transparent manner for promoting R&D activities and growth of indigenous technology apart from skill development.

J. Standards, public safety and national security

I. We submit that digital communication has become functionally similar and all modes of communication, viz. voice, messages, chat, social media, etc. have similar potential in enabling communication between users, either one to one or one to many. Hence for addressing situations related to public emergency, public safety, and national security, it is essential that all modes of digital communication are dealt with uniform regulations and there should not be any discrimination based on the underlying technology/network.

II. We would like to highlight and stress that while the telecom network provides the underlying connectivity for the transfer of data, the consumer interface and data management is done by the OTT applications riding over the network layer. In various domains, such as education, or entertainment, or tele-medicine, or facilitating e-mandis, or maps it's the OTT apps that collect, process and control the user data. Hence the regulations to protect the interest of the users should be focused on the OTT applications and not just limited to an underlying physical network which is already under significant regulatory obligations.

III. Telecommunications is already governed strictly under current regulations, viz. sourcing of equipment from trusted sources, annual audit of network as well as when required, data localization requirements, established mechanism for cooperation and coordination with LEAs, etc. In contrast, the OTTs don't have similar regulatory obligations on them, creating a non-level field for digital communication. We submit that same should be addressed through the creation of a comprehensive legal framework for digital communication as a whole and the same should be jointly developed through coordination and cooperation between DoT and MeitY.

K. Summary of our overall submission

I. We welcome the Government's approach of updating the legal framework for the development of converged digital sector in the medium and long term. DOT is requested to issue a 'draft bill' in near future to get inputs in a comprehensive and specific manner.

II. The telecommunication sector has done exceptionally well within the extant legal framework. The issues outlined in the present consultation can be addressed within the existing legal framework and therefore the new law should take the legal framework a step forward, by addressing the convergence and technological issues without disturbing investor confidence and core principles of the regulatory framework.

III. The new law should be comprehensive and encompassing all the relevant services and sectors namely terrestrial and satellite communication, OTT services, cloud based services, broadcasting and IT and should also comprehensively cover data security policy perspective, across these services and sectors.

IV. Such new legal framework should foster efficiency, agility, transparency, inclusiveness, regulatory certainty and eliminate the concept of discretionary powers. It must have precise terms without any ambiguity and should not give unbridled power to the executives. While the terms and conditions of the new law may not be detrimental to the relevant entity but at the same time, such terms and conditions should also not dilute any obligation of the relevant entity in terms of payment of government dues.

V. Spectrum Management: The proposed target principles under the new legal framework for spectrum management viz. efficient utilization in a liberalized and technologically neutral manner while maintaining policy continuity, are already in place and effective under the current auctioned based spectrum allocation policy of DOT and should be incorporated on 'as is' basis in the new Act. All spectrum assignments including for terrestrial communication, microwave access & backhaul, broadcasting and satellite communication should be done only through auction-based spectrum allocation and there is no justification for delicensing of the spectrum or administrative allocation to captive networks.

VI. **Right of Way:** the Government has taken big steps to address these issues vide amendment to ROW Rules dated 17th August 2022, however, a comprehensive solution to all RoW related issues can be achieved only through appropriate cooperation among all agencies. Further, all States must ensure that, their local self-governing bodies (LSGB) and deemed development authorities (DA) shall follow the DoT ROW policy.

VII. **Framework for mergers, acquisitions:** The new law can follow the principle of simplification of the process requiring to abide by the regulations under the Companies Act and avoid any overlapping parallel regulations.

VIII. **Insolvency:** We are supportive of the target of continuity of telecom services during insolvency, as covered under the existing regulations. It should be ensured that in no situation any pending liability, government dues should be written off through a statutory provision, to avoid any non-level playing field. Any financial incentive or administrative relief should be penned out detailing circumstances, amount, nature and methodology.

IX. **Expanding the scope of USOF:** We are supportive of the concept of overhaul the USOF with the wider concept of Telecommunication Development Fund. This new wider concept should continue to fulfil the current overarching vision of enabling rural Indians with reliable and ubiquitous telecommunication services in accessible and affordable manners. Migration of these rural customers to the newer technologies to be facilitated through fund. Further, the services can be made more affordable by lessening of the USOF levy or putting it in abeyance till existing unutilized large corpus gets fully utilised.

X. **Standards, public safety and national security:** For addressing situations related to public emergency, public safety and national security, all modes of digital communication are dealt with uniform regulations. The current security standards and other controls applicable to TSPs, but not to OTTs – which can be addressed through the legal framework.

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RCOM recommendations - Consultation Paper on 'Need for a new legal framework governing Telecommunication in India'

1. In the last five years, Indian Telecom Industry has witnessed closure of three TSPs by the ways ofinsolvency. The insolvent entities applied for merger before the Department of Telecommunications (DOT), but these merger applications could not see the light of the day because of various existing Telecom polices and guidelines. So, framework should be simplified for Telecom Merger, De-merger and Acquisition. There should be a single window solution for such merger, demerger and acquisition. Currently such activities require approvals from Ministry of Corporate Affairs, Competition Commission of India, DOTand Telecom Regulatory Authority of India. Such approvals take long time which will cause value erosion and may make the business case unviable.

2. Once a license is granted under Section 4 of the Indian Telegraph Act, both the licensor and the licensee may be treated at par like in the case of private contract. DOT as the licensor should be equally bound by the terms of the license agreement. Terms of the license cannot be modified unilaterally and without following the due process. A provision to this effect may be added in the Indian Telegraph Act. Flexibility of Central Government for spectrum usage in public interest must not extend to giving the DOT the power to alter terms on which the spectrum has been allotted.

3. The spectrum assigned to an entity isbeing considered to beutilized for public good whereas the spectrum allocated to insolvent entities remains largely unutilized for a long time. In addition, there are mattersstill pending for adjudication in courts of laws for Spectrum Usage Charges, OTSC, contiguity etc. Spectrum is considered as a natural scarce resource and long time taken in dispute resolution erodes the value of spectrum which has cascading effect on the sustainability of the TSP. Legal framework should envisage time bound disposal of such matters.

4. An effective provision in the Telegraph Act needs to be introduced for curbing and eliminating the anti-competitive measures being practiced by the dominating operators. TRAI as the Regulatory watchdog needs to be given more teeth and made accountable for its enforcement.

5. There must be clarity /uniformity in the license fee to be charged. Instead of charging SUC and license fee both/ separately, DOT may consider charging only license fee which is also essential for the use of spectrum/license. Fact remains that an operator at the time of grant of license pays one time Entry Fee which is essentially a license fee. Similarly, an operator also pays for the spectrum which it buys in auction. In such a situation why should an operator pay SUC is a question that needs to be considered.

6. The license fee to be charged must be service specific and contextual and free of all ambiguities.

7. CAF related verification/audit norms needs to be simplified and made practical for its compliance and implementation. Any imposition of CAF penalty under the license has to be reasonable with application of mind and case based and not to be imposed in a blanket manner.

8. In sync with the provisions of IBC during moratorium, a clear distinction with necessary rules needs to be made so far claiming past and present dues are concerned. In assessment of default in payment of dues for companies undergoing insolvency proceedings, only the dues which have arisen during the corporate insolvency resolution process should be considered.

TATA

TTL Comments on DoT Consultation Paper on 'Need for a new legal framework governing Telecommunication in India'

Introduction:

1. We, Tata Teleservices Limited (TTSL) & Tata Teleservices (Maharashtra Limited (TTML) together referred as 'TTL', welcome the initiative by the Department of Telecommunications (DoT) in revisiting India's telecommunication legal framework.

2. The Ministry of Communication has set the ball rolling seeking industry's views on India's telecommunication legal framework aiming at replacing The Indian Telegraphs Act, 1885. In the present milieu, where Government of India is prioritizing investments into ICTs for transforming India into a digitally empowered society and knowledge economy under its Digital India mission, a new legal framework which is clear, precise, and attuned to existential realities of the telecom sector is imminent for realizing its full potential.

3. Need of the hour is to have a simplified regulatory and licensing framework with reduced costs and compliance burdens that makes it easier for businesses to invest, create jobs and grow the economy. This has been recognized by National Digital Communications Policy (NDCP) 2018, which is avowed as a watershed moment that can potentially catalyze the dream of Digital India.

4. Currently, there are three laws which govern the Indian telecom sector. They are as follows:

    - The Indian Telegraph Act, 1885 ("Telegraph Act") came into force on October 1, 1885.

    - To regulate the possession of wireless telegraphy apparatus, the Indian Wireless Telegraphy Act, 1933 ("Wireless Telegraphy Act") was passed and it came into effect on January 1, 1934.

    - To regulate the possession of telegraph wires the Telegraph Wires (Unlawful Possession) Act, 1950 ("Telegraph Wires Act") was passed and it came into effect on April 1, 1951.

5. The above laws have stood the test of time and ushered India in it's telecom journey form a subscriber base of 1.5 Crore in 1997 to 117 Cr today. However, telecommunication legislation has evolved with time world over and it is time for India as well to have a re-look it's telecom laws to keep pace with emerging technologies.

6. Telecommunications services in India have taken significant strides since the same were opened for private players way back in 1994. The last 25 years have seen several changes with:

    - Licenses moving from fixed license fee regime to a revenue sharing regime in 1999.

    - Unified Access Service (UAS) License was introduced, and the Cellular Mobile Telephony Service/ Basic Service Operator Licensees were given the option to migrate to UAS License in 2004-05.

    - Enhancement to the licensing regime was brought by way of allowing dual technology in 2007-08.

- Delinking of the spectrum from the license in 2012 and allocation of access spectrum via spectrum auction.

- Introduction of Unified License in 2013 wherein different licenses existent have been added as different authorizations under the Unified License.

7. The new policy should lay stress on creating a roadmap for emerging technologies such as 5G, Artificial Intelligence, Robotics, Internet of Things, Cloud Computing and M2M by simplifying licensing and regulatory frameworks and ensuring appropriate security frameworks.

8. Thanks to the first batch of reforms announced by the Government of India on September 15, 2021, the telecom sector has got a breather. These reforms should provide significant relief to the sector in future and provide much sought-after respite from the liquidity crunch faced by Telecom Service Providers (TSPs) and may help some TSPs to survive longer and even hope for a turnaround.

9. The aim of this paper is to consolidate the existing laws governing telecommunication sector and establishing an enabling future-ready legal framework for the development of telecommunication sector and deployment of new technologies basis the global best practices, which is a leapfrogging step of the Government in the right direction for attracting more investments and financial stability in the telecom sector.

10. Thus, keeping in mind the mission and the vision propagated by National Digital Communication Policy of 2018 "NDCP-2018", we seek to provide our comments to the Consultation Paper on 'Need for a new legal framework governing Telecommunication in India'.

What a new Law needs to address

11. We echo the sentiments enunciated in the consultation paper that Telecommunication has the potential to unleash the true power of India's economy, accelerate socio-economic transformation and enable achievement of the vision of an "Aatma Nirbhar Bharat". Telecommunication is an enabler of digital governance that emphasizes data driven and people-centric delivery of goods and services to citizens and enterprises and plays a significant role in bridging the digital divide and has brought people together irrespective of any distance and significantly improves their lives. The role of telecom sector has been continuously expanding from providing voice services, network connectivity to addressing issues related to health, subsidy benefits, education, reach of governance, utility services etc.

12. To achieve the desired outcome, we strongly feel that existing legislations which primarily govern the telecommunication including but not limited to The Indian Telegraph Act of 1885, The Wireless Telegraphy Act, 1933, Telegraph Wires Act, 1950 and as amended from time to time need to be scrapped and replaced with a new Act, as envisaged in this Consultation Paper. The new Act must be in line with other essential services like electricity, healthcare, coal and transportation among others where there is no barrier to entry or exit. This will lead to healthy competition and faster expansion of services. Telecom is capital intensive sector and requires huge investments for setting up infrastructure like fibre, telecom towers and procuring spectrum. So non-serious players even in free market will not be able to survive unless they invest in these infrastructures. In view of this we strongly recommend that new Act must encourage free market approach to achieve desired outcome.

Analysis:

13. The existing licensing regime i.e., the Unified License regime is a vertically integrated licensing regime encompassing the right to provide – (i) infrastructure services, (ii) network services, and (iii) and telecom services to the end -customer. Only one Unified License is required for all kinds of telecommunication services in the entire country. The service provider [*also referred to as Telecom Service Provider* (TSP)] may choose the services to be offered, which are called Service Authorizations[1].

14. The government has always been in favour of "Light Touch" regulation. It's never too late and as the country has seen stupendous response to latest round of spectrum auction for 5G services, the government now must play a role of facilitator. There is large section of population in the hinterland which is still uncovered and to connect the unconnected the industry needs to invest in infrastructure and for this there is need to have industry-friendly licensing framework and simplified regulatory framework. Currently there are different types of licenses with some overlapping each other. For example, there is Unified License (UL) and similar to that a UL for Virtual Network Operators (VNO) Infrastructure Providers Category I so on. This needs to be simplified to attract investments and more players in the sector.

15. Besides telecom service providers, there is a set of Application providers – This consists of those who are providing various application services to different verticals using telecom resources. With technologies such as Machine-to-Machine (M2M) communications, IoT, Cloud services, data centres, e-commerce, etc., different application providers are in the field, and they are using telecom resources for the provision of their services. TRAI has already given its recommendations on M2M, Cloud services, Other Service Providers (OSPs), etc., recommending very light-touch regulation for such entities.

16. The existing regulatory regime consists of both integrated licensing layer (*i.e.*, the UL) as well as unbundled licensing layers and, we believe, any further unbundling (*i.e.*, adding new categories or sub-categories within existing license/service categories) is not required.

17. However, to distribute the local content and address the customer requirement in a limited geography, we propose dealer/ distributor model for provisioning of telecom service wherein a company can engage in an agreement with the licensee company be it UL, VNO or IP-1 and provide telecom service in limited geographical area. Such entity need not take any license from DoT. The burden of compliances rests with the licensee company.

18. In addition, we believe that DoT should focus on easing regulatory burden and reducing compliance cost on the existing TSPs and other service providers. Reforms such as the recent Union Cabinet Decision of September 15, 2021 announcing various structural reforms, procedural reforms and addressing liquidity requirements of TSPs, even though partly, is what is needed to provide momentum to the Telecom Sector. We suggest that DoT should carry out more such

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[1] Authorization for various services, as contained in UL, are: (a) Unified License (All Services), (b) Access Service (Service Area-wise) (c) Internet Service (Category – A with All India jurisdiction), (d) Internet Service (Category – B with jurisdiction in a Service Area), (e) Internet Service (Category – C with jurisdiction in a Secondary Switching Area), (f) National Long Distance (NLD) Service, (g) International Long Distance (ILD) Service, (h) Global Mobile Personal Communication by Satellite (GMPCS) Service, (i) Public Mobile Radio Trunking Service (PMRTS), (j) Very Small Aperture Terminal (VSAT) Closed User Group (CUG) Service, (k) INSAT Mobile Satellite System-Reporting (MSS-R) Service, (l) Resale of International private Leased Circuit (IPLC).

reforms aimed at easing stress (financial as well as arising from licensing & regulatory compliances) of the existing TSPs and other service providers.

Suggestion/Comment:

A. The existing licensing regime of Unified License must be continued. There is no rationale for introducing segregated network layer and service layer regime. Meddling with the existing UL (by fragmenting it into different layers) will cause regulatory uncertainty and, needless to state, it encroaches upon the contractual and legal rights of the existing license holders who have committed significant capital based on the rules set in the UL.

B. **Dealer/ distributor model for provisioning of telecom service in limited geographical area without any need for license from DoT. They are solely dependent on the existing licensee who are responsible for all the regulatory compliances.**

C. Formulating a single comprehensive law that consolidates rules/guidelines/directions/orders et al relating to infrastructure, RoW and equipment in single document. This can be done by enacting a new 'Act', or Rules under the Indian Telegraph Act.

D. The new law should address the following pain points of Telecom Service Providers:

   (i) Need for simplifying UL-VNO regime: There is a requirement to review UL-VNO license regime and simplify it further to increase its adoption in India which will provide more choices to customers for choosing their Service Delivery Operators. Compliance and other costs associated with UL-VNO regime need to be brought down and in case any bottlenecks are faced by MVNOs in getting the resources from Access Providers then appropriate regulatory action needs to be taken for ensuring availability of resources at reasonable cost for both NSOs and VNOs. In this regard, we suggest DoT to implement recommendations made by TRAI in respect of VNOs in its Recommendations on 'Enabling Unbundling of Different Layers Through Differential Licensing' dated 19.08.2021.

   (ii) Incentivizing NSO-VNOs for mobile services: Necessary changes should be made to the existing licensing regime to incentivize mobile operators to provide competitive, fair wholesale pricing to multiple VNOs and to allow such VNOs to partner with more than one NSO. Further, in our view, VNO should have the option to choose multiple NSO for mobility and fixed line services in a Licensed Service Area.

   (iii) Heavy financial burden on telecom sector (GST 18%, License Fee 8%): The Indian telecom sector especially Wireline based services continue to reel under heavy financial burden of taxes and levies. Government announced many measures including abolishing of Spectrum Usage Charges (SUC) to the operators rendering services using spectrum through Wireless technology. To revitalize it back to higher growth and to meet the Government's Digital Push, there is an immediate need to provide financial reliefs and incentives to the wireline-based services to meet the Government's target of "Broadband For All" and also connecting all villages and rural areas as envisaged by the Hon'ble Prime Minister of India and the National Digital Communications Policy 2018. For this we appeal to the Government to rationalize taxes and License Fee (LF). The current LF is 8% (even for Wireline service providers) which includes 5% as

Universal Service Obligation (USO) Fee. With every TSP (both Mobile and Wireline service providers) now reaching the rural areas, the concept of USO levy has lost its relevance. Charging of USO levy on wireline operators also defies logic. Moreover, huge amounts are remaining unutilized as has been observed by TRAI in it's recommendation on *"Definition of Revenue Base (AGR) for the Reckoning of License Fee and Spectrum Usage Charges"* dated January 6, 2015. Therefore, this is the appropriate time to review and phase out the USO Fee which is part of 8% LF. Following are our suggestions which may be considered:

- Rationalization of license fee: Reduction of license fee to Zero for the Wireline Services and 3% for Wireless Services from the current 8% of the Applicable Gross Revenue, (ApGR) at the earliest. Wireline is the backbone of any economy to wither fast changing technology in Wireless that is coupled with investments whenever the change in technology takes place. At the same time, upfront investment in wirelines services including laying of fiber across the length and breadth of the country involves significant investment and realization is over very long period. Therefore, It is requested that the Government may consider bringing down the license fee to zero for those services that are delivered through Wireline. In fact, the Government in the right earnest abolished Spectrum Usage Charges for auctioned spectrum and allowed surrender of spectrum encouraging investment in growth of Wireless services. Once invested in Wireline/fiber network, it is not possible to exit easily as entire investment is sunk upfront by the Telecom Operator. Wireline is the backbone to enable various services including Wireless connectivity. Similarly, Wireline services require significant push from the Government by bringing down the LF to zero. TRAI in its's recommendation on "Roadmap to Promote Broadband Connectivity and Enhanced Broadband Speed" dated August 31, 2021 has recommended to provide incentive on LF exemption for proliferation of fixed line broadband. This will ensure that the rural geographies will get its due share of Wireline based connectivity that is missing currently.

- Reduction in GST & simplified compliances:

  - We request the Government to revisit and lower the GST rate from current 18% to 5% as telecommunications being an essential service.

  - One time refund of accumulated GST credit or permission to use, say 75% of accumulated credit for repaying DoT liabilities including LF.

  - Simplify compliances related to GST.

    - Eligibility of credit – tax actually paid to the government (Section 16(2) (c) of CGST Act) : The condition prescribed under section requires that the tax charged has been actually paid to the government for admissibility of the Credit. In the absence of any prescribed mechanism to know whether the vendor has actually paid tax, it causes undue hassles and hardships to the honest taxpayers. This condition of availing of credit may be removed.

    - Requirement of state wise Trial Balance ('TB') by Government authorities: As per the licensing conditions TSPs are mandated to maintain Licensed Service Area (LSA) wise books of accounts/Trial Balance. Therefore, for a LSA like

Delhi, which comprises of parts of U.P & Haryana states, license requires TSP to maintain one set of books for the Delhi LSA. However, GST authorities are insisting on submission of state wise trial balances in respect of TSPs operating in LSAs comprising of multiple states for purposes of audit verification. Even the requirements prescribed under GST nowhere states that the TB should be at state level. The provisions of other laws, including Income Tax Act, 1961 and Companies Act, 2013 requires maintenance of a TB at company level and do not require or mandate state wise TBs. In case of Telecom sector, since revenue is recognized LSA-wise, a clarification may be issued by GST authorities, for not insisting on state-wise TB during GST audit.

- Centralized GST Audits & Assessment: Prior to GST Regime, Service Tax Audits were conducted at one place in case of Centralized Registration. In GST Regime Audits are taking place at state level, which has increased the interface 33 times with multiple authorities at state(s), with most taking independent view on same items of revenue & GST Credit. A single interface as under the service tax regime for Audits and Assessments may be proposed for uniformity and simplifications in the telecom sector, which will be of great respite. The option of Centralized Registration may also be given to telecom operators.

- Removal of GST on License Fees. License Fees is a levy by the government under the licensing conditions which is charged as a % on Revenue (ApGR) earned by the TSPs. Government has been earning GST on these revenues. Charging GST on the license fee amounts to dual levy and harms the cash flow of the TSPs.

- Exemption of GST on "Right of Way" granted by the Central Government / State Government and Development Authorities (Pre GST-Issue).

- One License One Assessment: Currently, Unified License regime has either circle level or PAN India authorization. Typically, TSPs hold multiple authorizations. They require to maintain independent books of account at circle level as well as at entity level. This results in multiplicity of efforts at TSP's as well as DoT's end. Hence, there is a need to consolidate accounting for all types of authorizations under single lens.

  As of now, AGR Assessment is a humongous task, starting with preparing separate circle wise books of accounts, followed by 18 audits (for TTL) for respective circles by statutory auditor to produce Audited AGR. These Audited AGRs are filed separately in each of the circle followed by assessment at circle. In case a single Audited AGR is accepted the way it is done for Income Tax compliances, viz. Tax Audit & Transfer Pricing Audit etc., this will do away with multiple assessments, reduce audits & assessments from 18 to 1, thereby DoT will derive benefit of consistency and speedy assessment.

(iv) Active Infrastructure Sharing: The recent amendments to license on Active Infrastructure Sharing to allow Wi-Fi related infrastructure to be shared across operators is a welcome step and will aid the penetration of internet in the country. Similar policy directions are required in the wireline infrastructure domain. The SME sector has been hit the hardest by the Covid 19 pandemic and the brunt of the impact is so severe that many seek new "digital" business models to survive in the new norm. The sharing of active infrastructure in the core networks of wireline telecom operators shall enable the delivery of low-cost voice, data, and internet products which are essential for this sector to sustain and flourish. The recommended Network elements proposed to be included for sharing between TSPs are as under:

- **Core Voice Platforms:** including Switches (IMS, NGN), SBC, MGW, MGCF, AGCF, and associated voice network infrastructure.
- **Core Data and Internet Platforms:** including Service delivery nodes and respective media such as Internet Gateways, Routers, Switches, STP, IN, SMSC, MPLS, AAA, CDN, etc.
- **Private Network, URLCC:** Ultra reliable Low Latency communication network, which has slicing capability.

(v) Wireline Voice Services:

- **Internet Telephony:** Cloud adoption is the next wave in telecom sector and hence the regulations for Internet telephony should open with below consideration:
    - All Users should be given full flexibility to use their Fixed line number over any access medium including Internet. Globally this is operational, and India also should adopt this.
    - Recent revised guidelines dated June 23, 2021 for Other Service Provider (OSP) should be extended for all types Enterprise Customers.
- **Network Centralization:** Coming years would see Network centralization to reduce costs and increase control and monitoring. The introduction of All Internet Protocol (IP) platforms like IP Multimedia Subsystem (IMS) will lead to centralized architecture for Call control. Hence, the concept of "local Handover" of calls or Short Distance Charging Ara (SDCA) based call routing should be removed. The inter operator traffic exchange should be enabled for limited preferred Point of Interconnect (POI) locations. This will ease the network architecture and help in reducing costs. This will also help to launch wireline voice services in tier 3, 4 and beyond towns.
- **Virtual Caller ID platforms:** Mobile phone applications like True caller are displaying Caller Line Identification (CLI) basis the inputs given by the app users, this information is not being validated from any authentic source which is leading to:
    - Display of incorrect caller IDs and display of previous user's information (in case of recycled number).
    - Such applications are also displaying category of probable call (promotional /SPAM) which is again not authentic (for example eCommerce/ Food Delivery numbers displaying as SPAM), which leads to call rejections and multiple reattempts, choking network resources of wireline operators.

- Applications like True caller have created a business model around this by not giving any process to correct the tagging or CLI, asking recurring commercials from Enterprises Customers to correct the CLI name or to remove the number from SPAM category.

- Enterprises are also reaching out to Wireline Operators to change the numbers frequently which is consuming Number Series Resource.

(vi) Despite the first batch of reforms announced on September 15, 2021, the telecom sector has heavy baggage of legacy issues which are still haunting the sector. In addition to that no relief has yet been provided to the Wireline based services, which is the backbone of the digital economy agnostic of changes in Wireless technology. In view of this, second batch of reforms are necessary as soon as possible to address both the legacy issues and strengthen the investment in Wireline and Broadband Services that will unshackle the TSPs and the sector so as to provide much needed impetus to growth of the sector both in urban and rural geographies.

Spectrum Management

Analysis:

19. Presently, in India:

(i) While Access spectrum is assigned by auction, backhaul spectrum is assigned administratively (on a link-by-link or case-by-case basis). Such distinction in assignment of Access and backhaul spectrum is consistent with other countries across the world. TRAI has also recommended for administrative allotment of backhaul spectrum[2]. Some of the reasons for not auctioning backhaul spectrum are that: (i) it is a prerequisite for offering access and auction of Access spectrum is generally on the promise to offer backhaul[3]; (ii) by its very nature it is a point-to-point beam signal and plays a key role in connecting mobile network with core network and an essential infrastructure to supporting Access Services.

(ii) The Access spectrum assigned by auction is liberalized spectrum and there are no restrictions on the technology to be deployed for providing services within the scope of the service license.

(iii) With the recently concluded 5G auctions, next generation technologies/networks are expected to deliver high data rates to each user to run high-definition applications and support a diverse range of applications and services. Next generation technology/network is a set of technologies that can deliver the optimum results in terms of throughput, network capacity, spectral efficiency, energy efficiency, lower power consumption, and latency, ensuring fairness among all the users, especially the cell-edge users.

20. To harness the full potential of such advanced technologies/networks (5G & later 6G), efficacious Spectrum Management, thus, becomes critical.

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[2] *Ref.* TRAI Recommendations on Allocation and Pricing of Microwave Access (MWA) and Microwave Backbone (MWB) RF carriers dated 29.08.2014

[3] *Ref.* Notice Inviting Applications for Auction of Spectrum 2022 (Cl. 2.2).

21. For designing future wireless networks following, amongst others, are considered to be significant factors:

(i) Carrier Aggregation – Different band may be required to be clubbed/aggregated for meeting the extensive bandwidth required for the next-generation network.

(ii) Spectrum Sharing/Trading - Spectrum sharing allows access to new spectrum when clearing a band in a service area is not possible. In other words, a TSP can access new bands and/or additional capacity where there are no other reasonable alternatives available.

(iii) Radio Resource Management – The objective of RRM is to utilize the limited RF spectrum resources and radio network infrastructure as efficiently as possible.

(iv) Capacity Improvement – Spectrum is scarce resource and therefore to cater to the future applications of spectrum, network capacity maximization is important.

(v) Energy Efficiency – Advance applications/technologies require more energy and, as such, energy-efficient methods would be required to maximize the capacity and coverage.

22. To successfully support future data requirement and diverse set of devices, next generation technologies/networks (like 5G, 6G and so on) will require competently managed spectrum resources. And a comprehensive spectrum management law rather than a scattered spectrum rules, we think, would help in leveraging full potential of such technologies.

Suggestion/Comment:

A. We believe that there is an urgent need for enacting a single law covering, amongst other things, all aspects related to spectrum assignment, management, and regulations (*collectively referred to* 'Spectrum Management'). Currently, one must examine various documents such as Indian Wireless Act, UL, NIA, WPC circulars/guidelines etc. for spectrum related provisions. A single law will make it more efficient to manage/address issues relating to spectrum is a more 'All-inclusive' manner and support rapid and necessary changes in the spectrum regulations/rules to support next generation technologies/networks.

B. Enacting a separate spectrum law: DoT should enact a separate spectrum law consolidating rules with respect to spectrum in one single document. Such a law must at least cover – (i) rules of spectrum allocation (auction for Access spectrum and administrative allocation for backhaul); (ii) even spectrum sharing and spectrum trading rules can be merged in the new document; (iii) spectrum management; spectrum licensing *et al*. This may be done by enacting an 'Act' or 'Rules' framed under Indian Wireless Telegraph Act or a separate chapter in the UL. Having it under the UL will allow for easy amendments, whereas Act/Rule will require parliament approval.

C. Backhaul spectrum – With 5G auction the need to have sufficient backhaul spectrum has only increased, we, therefore, suggest that: (i) DoT should come up with a transparent and clear policy/rule for allocation of backhaul spectrum; (ii) there should be timely allocation of backhaul spectrum; (iii) backhaul spectrum should be treated as essential infrastructure and the cost/pricing should be kept affordable; (iv) in case of reframing/surrender of spectrum, replacement spectrum should be provided without any delay.

D. Microwave spectrum allocation for wireline – Traditionally licensed spectrums such as 15/18GHz are being allocated to UASL / UL license providers and mainly coupled with the Cellular Mobile Telephony, however Operators who have only fixed line services; do not have any such microwave spectrum to connect the Enterprise customers across SME, LE & other categories. Many of the places where optical fibre cannot be provided due to prohibitive cost of ROW or any other reasons, such fixed line operators have to rely on unlicensed bands such as 2.4GHz or 5.8GHz which are highly unreliable, and they do not offer any higher bandwidth options which is the need of the time. Hence it is recommended that suitable microwave spectrums should be immediately made available to such fixed line operators for last mile and middle mile connectivity. Some channels from 15/18 GHz should be made available for such applications without any cost/fee. Apart from identifying other suitable frequency bands, we also propose that the Govt may consider V & E Band spectrums which have ability to deliver higher bandwidths and they should be unlicensed for such applications and to be made available on priority.

Right of Way

Analysis:

23. The Right of Way (RoW) for establishing telecommunication infrastructure is as important as Spectrum for mobile networks. A uniform and affordable RoW process is indispensable to creating robust digital connectivity across India and realizing the digital India mission of the Government of India. Precisely so, the NDCP-2018 has acknowledged the need for building a robust digital communications infrastructure. The clause 1.1 (h) of NDCP-2018 stated as below: *"Creating a Broadband Readiness Index for States/ UTs to attract investments and address RoW challenges"*

24. Generally speaking, there are three broad aspects concerning RoW faced by TSPs/telecom infrastructure companies: (i) requirement of submitting multiple applications to the different authorities. Procedures more often differs according to the municipality; (ii) delay in obtaining RoW permits. Undue delay in obtaining RoW permission increases the costs of deployment; and (iii) charges for using RoW and reconstructing and maintenance requirements are unreasonable and place undue burdens on TSPs/telecom infrastructure companies.

25. As a step towards addressing some of the RoW issues, DoT on 15.11.2016 issued 'The Indian Telegraph RoW Rules 2016' (RoW Rules). The RoW Rules were announced with the objective of simplifying the process of deployment of underground (optical fiber) and over-ground (mobile towers) infrastructure in India and to streamline the RoW related charges across the States/ UTs & Central agencies.

26. However, implementation challenges have prevented uniform application of the RoW Rules across the country. The policy should be implemented in true spirit by all the States, Central and the local agencies. All the States, Central and local agencies should adopt the policy in alignment to the RoW rules of 2016 issued by DoT.

27. Foremost, we request that RoW Rules should be implemented in true spirit by all the States, Central and the local agencies without any delay. All the States, Central and local agencies should adopt the policy in alignment to the RoW rules of 2016 issued by DoT.

28. Some of the key concerns/issues that exist in respect of RoW (also highlighted and captured in the TRAI Recommendations of 2021) and that require urgent redressal are as follows:

(i) No alignment of Rules by Center and States/UTs
(ii) Lack of single window clearance. Presently, grant of RoW is a multiple agencies issue involving different procedures and times line.
(iii) Coercive action taken on telecom infrastructure by local/municipal/state authorities like arbitrary sealing of towers or fiber cuts or electricity disconnection etc.
(iv) Lack of uniformity in charges.
(v) Hurdles in access to street furniture.
(vi) Overall high cost for obtaining and sustaining RoW.

29. TRAI through its Recommendations of 2021 (re. 'Roadmap to Promote Broadband Connectivity and Enhanced Broadband Speed') has sought to address some of the concerns which are a step in the direction of easing RoW permissions. These recommendations should form part of the new telecom law on RoW.

30. The telecommunication services have been recognized world-over as an important tool for socio economic development for a nation. The rapid expansion of Telecommunications infrastructure is essential in connecting India, bridging the rural urban divide and facilitating socio economic development of the country. During Covid lockdown DoT proactively coordinated with state governments & other authorities (such as police) in ensuring that all support was made available so that telecom and broadband/Internet services could be provided without interruption, and telecom infrastructure were maintained, enabling seamless connective during lockdown.

Suggestions/Comment:

A. No coercive action: Foremost, there should not be coercive action taken against TSP/telecom infrastructure providers by local/municipal/state authorities like arbitrary sealing of towers or fiber cuts or electricity disconnection etc. Currently, the TSPs and telecom infrastructure providers are involved in needless litigation in courts against coercive actions by municipal and local authorities in different States across India.

B. Need for a 'National RoW policy' as recommended by TRAI - RoW permissions are required by all types of utility service providers, i.e. telegraph, electricity, water, gas etc., and presently such permissions are regulated under different Laws, Rules and Regulations. This leads to cost inefficient and delayed establishment of utility infrastructure. There is also lack of clarity regarding the documents required for granting ROW permissions. Multiple policies, multiple levies and varying procedures across the States add to the delay. Major States never follow the Smart City guidelines and post implementation of Smart City, do not support the existing OSP work executed by the Operators over the last many years. Support for restoration of services is also not granted in these cases. To overcome these inefficiencies, the Central Government should come out first with the National RoW Policy, and subsequently it should also enact a model law for RoW permissions which should be adopted by all Appropriate authorities (Central & State). For this purpose, the Central Government in coordination with the State Governments should consider constitution of a National RoW Council so that in time bound manner the policy and legal framework for RoW permissions could be put-in-place.

C. Single window clearance with deemed approval: Presently, grant of RoW permissions is a multi-stakeholder issue involving multiple authorities like local authorities/bodies, Railways, Roadways, Forest departments, Electricity distribution etc. There is no institutional or coordination mechanism either at the State or Central level to appreciate the requirements and concerns of each other. DIT was setup in Maharashtra to provide permissions for ROW. However, Operators still have to apply to various Local Municipal Corporations separately for ROW permissions along with DIT clearance. For realization of 'Single window clearance' effective coordination among these appropriate authorities is required. It is noteworthy that NDCP-2018 talks about establishment National Digital Grid by 'Creating a collaborative institutional mechanism between Centre, States, and Local Bodies for Common Rights of Way, standardization of costs and timelines; and removal of barriers to approvals'[4].

Thus, under the guidance of the Central Government, all States should implement a single window clearance system with well-defined and monitored timeframe of granting all the RoW permissions. The Ministry of Communications / DoT can play the facilitative role for these approvals with state governments. These approvals should be fully automated and online (easy to navigate and user-friendly interface) in a unified national portal integrated with states. TRAI in its recommendations of 2021 has suggested creation of 'National RoW Portal', which is a step in right direction.

For timely processing of applications for RoW permission, concept of deemed approval should be introduced. Meaning thereby that an unexplainable delay beyond the prescribed time frame (e.g. 30 days or less) should be deemed approved. This concept of 'deemed approval' is not new and exists in case of 'spectrum trading[5]'. In case of spectrum trading time period of 45 days is stipulated from date of joint intimation to DoT to the effective date of the trading of spectrum and any clarification, if required, is to be communicated within such 45 days. In case of no communication, within such 45 days from the date of receiving of joint intimation, the right of spectrum is deemed transferred as per the joint intimation submitted to DoT[6].

D. Replace various RoW charges with only a single 'one-time' charge - In view of the Central Government vision of Digital India, various ROW restoration charges should be replaced with only a single One-time charge so that Operators can further expand their reach and connectivity even to the remotest locations across the country. There should be no other charges. This will accelerate broadband infrastructure deployment, boost investments and generate employment that can leapfrog India to the league of digital economies.

E. A "Dig Only Once" policy to incorporate designing of Utility Duct with implied RoW permission for Telecommunications in all infrastructure projects, building and housing bylaws - Standardized provisions and specifications for installing utility duct/optical should be part of the construction design policies of all Central, State level authorities and agencies in-charge of all infrastructure approvals and projects whether private or public (e.g. NHAI/Urban Development Ministry/Housing Ministry/Public Works and local development authorities). In fact, for the purpose of issuance of completion certificate of the building/infrastructure this can be a mandatory requirement.

F. Make street furniture available across the country at very low or no cost at places such as bus stop shelters, lampposts or traffic lights, owned by municipalities, to help small cell site deployment – With the imminent 5G deployment across India, putting in place a uniform, simple, and efficient process for granting access to street furniture for installing small cells is need of the hour. In India, the power and broadcasting sector contributes for accessible street furniture like electric poles/lines/supply pillars/cabinets/posts. While rolling out 5G networks, street furniture would play a significant role in offering good quality services by expanding the network coverage and going closer to the consumers. Granting access to public places like Government buildings/railway stations/metro rail stations/airports/ stadiums etc. and street furniture, such as bus stop shelters, utility poles, lamp posts or traffic lights, owned by municipalities, at reasonable cost could remove a significant hurdle in 5G small cell deployment in the country. Since they are relatively small in volume, it is important that local authorities allow for small cell deployments with minimal administrative hurdles or delays.

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[4] *Ref.* 1.1 (c) iii of NDCP-2018

[5] *Ref.* Guidelines for Trading of Access Spectrum by Access Service Providers dated 12.10.2015.

[6] *Ref.* Sr. No 11 at Pg 6 of DoT Office Memorandum No. L/14006/02/2016-NTG dated 12.05.2016 containing 'Clarification on the issues raised by Telecom Service Providers and other on Spectrum Trading Guidelines dated 12.10.2015'

G. Declaring telecom infrastructure as critical infrastructure – This will help reduce fiber cuts due to road expansions thereby improving quality of services and reducing costs.

H. Establishment of Common Ducts – As recommended by TRAI[7] the Central Government should incentivize establishment of common ducts and posts, to be shared on non-discriminatory basis with TSPs and infrastructure providers, for establishing telegraph and telegraph lines. Further, amongst others, in line with RoW charges exemptions granted by the Central Government departments and agencies/ State Governments/ UT Administrations for BharatNet project, Central Government should coordinate with the respective State Governments/ UT Administrations to exempt RoW charges for next five years (i.e. from FY 2022-23 to FY 2027-28) for expeditious laying of common ducts and posts. Simultaneously, the Central Government should ensure that during these five years RoW charges for laying common ducts and posts shall be exempted by the Central Government departments and agencies also.

I. Rank and benchmark states on RoW as key parameter including in Ease of Doing Business (EoDB) rankings for broadband readiness, assessing their competitiveness, and attractiveness for investors and companies - The ease, duration and cost of getting timely RoW permissions in states and even districts (DHQs) can be part of the assessment (e.g. an annual / half yearly review). This is help in observing efficiency and eventually identifying and addressing latency.

J. Structured aerial fiber in dense urban environments & difficult areas - Permit the cost-effective means of fiber deployment such as structured aerial fiber to enhance the backhaul capacities in dense urban and difficult geographies, with due consideration to aesthetics of surroundings.

K. Wireline telecom operators have made significant investments in developing an optical fiber infrastructure through right of way payments and laying of optical fiber cables next to the road's infrastructure. These critical assets bear the brunt of civic activities such as road widening, metro rail works, construction of bridges and flyovers, smart city works, etc. A policy guideline that provides protection to these critical assets by providing "safe passage" to them during such works and restoration to original status post completion of the works shall go a long way in ensuring minimal disruption to services while ensuring that the cables are not laid in an undesired manner spoiling the street aesthetics.

L. Government land and buildings: Government land and buildings should be made available for telecom infrastructure usage and rollout to reduce the telecom rollout cost.

Framework for mergers, acquisitions etc.

Analysis:

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[7] *Ref.* Para 7.19 – 7.31 TRAI Recommendations on 'Roadmap to Promote Broadband Connectivity and Enhanced Broadband Speed'

31. The existing Guidelines for Transfer/Merger of Telecom Licenses ('Merger Guidelines') were issued by DoT on 20th February 2014 (subsequently amended on 30th May 2018 and 24th September 2018). The said Guidelines require prior approval of the DoT for merger of the license after the merger scheme has been sanctioned by NCLT under the Companies Act.

32. In our experience such requirement of obtaining prior DoT approval most often than not has led to unnecessary litigation before Hon'ble TDSAT. The petitions have been filed by the TSPs (involved in merger) before the Hon'ble TDSAT seeking quashing and setting aside certain conditions imposed upon them by DoT in terms of, inter-alia, paragraphs 3(i) and 3(m) of the Merger Guidelines. The Hon'ble TDSAT, on several occasions has granted stay to the operation of such conditions. This has resulted in uncalled for delays in mergers being taken on record.

33. We certainly welcome the initiative taken by DoT in the present Consultation Paper to do away with such requirement of prior DoT approval. Such an initiative is in consonance with the NDCP-2018 which greatly stresses on "simplifying and facilitating Compliance Obligations" and one of the action points for fulfilling the afore-mentioned strategy is by "Reforming the Guidelines for Mergers & Acquisitions, 2014 to enable simplification and fast tracking of approvals"[8]. Also, it addresses the long-standing demand of the stakeholders that since DoT is already a part of the NCLT merger proceedings, the merging entities should not be required to approach DoT separately for its approval.

34. We are of the view that:

(i) There is no requirement for having a separate merger guideline for telecom sector and DoT should do away with any merger guidelines. Having a separate merger guideline serves no purpose and instead it only complicates and brings in latency in the whole process of merger. It may be noted that there are no specific merger provisions/rules for other regulated industries, such as electricity, gas, telecommunications, postal services, rail, airports and air traffic services. The regulatory oversight exercised by the Competition Commission of India and the TRAI is sufficient to address any competition related concerns that may be posed by the potential merger of telecom entities.

(ii) In any case, no separate approval should be required from DoT after the merger scheme has been sanctioned by NLCT/Company Court. DoT should simply take on record the merger once the NCLT/Company Court approval has been communicated to the DoT. In case of merger DoT should adopt practice similar to spectrum trading. Under Spectrum Trading Guidelines, DoT only issues an endorsement taking on record the transfer request and makes necessary changes in the spectrum register. There is no concept of any approval by DoT.

Suggestion/Comment:

A. No separate 'merger guidelines' is needed. The current guidelines should be scrapped. All actions initiated for alleged violations need to be scrapped.

B. And in any case, no separate approval should be required from DoT after the merger scheme has been sanctioned by NLCT/ Court.

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[8] *Ref.* 2.1 (c) v of NDCP-2018

C. The Government needs to provide a simplified exit policy for TSPs for closure of business through merger and de-merger. It should be done in a time bound manner and to ensure the companies do not lose out on the value of assets they have created due to delays in regulatory approvals.

D. In case a TSP does not hold any spectrum, winding down of such telecom business should follow only NCLT process without any additional conditions or approvals from DoT.

E. There should be easy exit for the listed companies. The current regime of Reverse Book Building makes it almost impossible to de-list it from the bourses. This needs to be simplified so that a listed entity can close their business by way of merger/de-merger.

Provisions Pertaining to Insolvency

Suggestion/Comment:

A. While 'The Insolvency and Bankruptcy Code' (IBC Code) is a complete law in itself with respect of insolvency and bankruptcy, considering 'spectrum' to be a scare natural resource DoT should formulate specific provisions concerning treatment of spectrum in the event a TSP holding spectrum goes into IBC.

B. We believe that once a TSP goes into IBC, DoT should take back the spectrum so that the spectrum, which is a scarce natural resource, can be made available for future auction. There is no rationale in keeping the spectrum blocked. DoT may refund pro-rata amount to TSP once it realizes some value for withdrawn spectrum in subsequent auctions.

Expanding the scope of the USOF

Analysis:

35. Initially, the Universal Service Obligation Fund (USOF[9]) was established with the fundamental objective of providing access to 'basic' telecom services to people in rural and remote areas at affordable prices. Later, the scope was widened to provide subsidy support for enabling access to all types of telecom services, including mobile services, broadband connectivity and the creation of infrastructure in rural and remote areas.

36. Today, 'The World Bank'[10] recognizes Broadband (or high-speed) internet access is not a luxury, but a basic necessity for economic and human development in both developed and developing countries. It is a powerful tool for the delivery of essential services such as education and healthcare, offers increased opportunities for women's empowerment and environmental sustainability, and contributes to enhanced government transparency and accountability. It also helps foster the social development of communities[11].

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[9] *Ref.* Rule 523 (m) of Indian Telegraph (Amendment) Rules, 2004 defines 'Universal Service Obligation' (USO) as *"the obligation to provide access to basic telegraph services to people in the rural and remote areas at affordable and reasonable prices."*

[10] *Ref.* https://www.worldbank.org/en/topic/digitaldevelopment/brief/connecting-for-inclusion-broadband-access-for-all

[11] *Ref.* https://www.worldbank.org/en/topic/digitaldevelopment/brief/connecting-for-inclusion-broadband-access-for-all

37. And rightly so, NDCP-2018, *inter-alia*, recognizes the need for reviewing the scope and modalities of USOF and broadening its objectives to enable universal broadband access including for economically and socially weaker sections in urban pockets.

Suggestion/Comment:

A. The Indian telecom sector especially Wireline based services continue to reel under heavy financial burden of taxes and levies. Government announced many measures including abolishing of Spectrum Usage Charges (SUC) to the operators rendering services using spectrum through Wireless technology. To revitalize it back to higher growth and to meet the Government's Digital Push, there is an immediate need to provide financial reliefs and incentives to the wireline-based services to meet the Government's target of "Broadband For All" and also connecting all villages and rural areas as envisaged by the Hon'ble Prime Minister of India and the National Digital Communications Policy 2018. For this we appeal to the Government to rationalize taxes and License Fee (LF). The current LF is 8% (even for Wireline service providers) which includes 5% as Universal Service Obligation (USO) Fee. With every TSP (both Mobile and Wireline service providers) now reaching the rural areas, the concept of USO levy has lost its relevance. Charging of USO levy on wireline operators also defies logic. Moreover, huge amounts are remaining unutilized as has been observed by TRAI in it's recommendation on *"Definition of Revenue Base (AGR) for the Reckoning of License Fee and Spectrum Usage Charges"* dated January 6, 2015. Therefore, this is the appropriate time to review and phase out the USO Fee which is part of 8% LF.

B. Rationalization of license fee: Reduction of license fee to Zero for the Wireline Services and 3% for Wireless Services from the current 8% of the Applicable Gross Revenue, (ApGR) at the earliest. Wireline is the backbone of any economy to wither fast changing technology in Wireless that is coupled with investments whenever the change in technology takes place. At the same time, upfront investment in wirelines services including laying of fiber across the length and breadth of the country involves significant investment and realization is over very long period. Therefore, it is requested that the Government may consider bringing down the license fee to zero percentage of ApGR for those services that are delivered through Wireline. In fact, the Government in the right earnest abolished Spectrum Usage Charges for auctioned spectrum and allowed surrender of spectrum encouraging investment in growth of Wireless services. Once invested in Wireline/fiber network, it is not possible to exit easily as entire investment is sunk upfront by the Telecom Operator. Wireline is the backbone to enable various services including Wireless connectivity. Similarly, Wireline services require significant push from the Government by bringing down the LF to zero percentage. TRAI in its's recommendation on "Roadmap to Promote Broadband Connectivity and Enhanced Broadband Speed" dated August 31, 2021 has recommended to provide incentive on LF exemption for proliferation of fixed line broadband. This will ensure that the rural geographies will get its due share of Wireline based connectivity that is missing currently.

Penalties

Analysis:

38. A penalty clause in a contract ensures that the defaulting party to a contract provides damages in the event that the contract is breached. In India penalty clauses are legally enforceable if they are based on the doctrine of reasonable compensation. This means that the compensation must be proportional to the act that caused the breach of the contract. The Indian Contract Act forbids

unjust enrichment under the garb of claiming compensation for a breach. The Hon'ble Supreme Court in catena of judgment, including the constitutional bench judgment in **Fateh Chand Vs. Balkrishan Dass [AIR 1963 SC 1405]** has held that the measure of damages in case of breach of a stipulation by way of penalty is reasonable compensation, not exceeding the penalty stipulated for.

39. Presently, penalty may be imposed by DoT for breach of license conditions under:

(i) License Agreement - Annex. VI to the UL prescribes the maximum amount Penalty for per violation for each occasion in Service Area. In respect of 'Access', 'ILD' and 'NLD' maximum Penalty of Rs. 50 Crores is prescribed per violation for each occasion in a Service Area. Extrapolating this to a telecom licensee having 'Access Service' authorizations in all 22 Service Areas (i.e. Pan India), DoT can levy an aggregate penalty of Rs. 1100 Crores for 22 Service Areas per violation. This by no rational is reasonable. Additionally, short payment of license fee also attracted high rate of interest (compounded monthly), Penalty and interest on Penalty until 01.10.2021 when DoT decided to delete Penalty and interest on Penalty for delayed/short payment of license fee.

(ii) Indian Telegraph Act, 1885 - Section 20A prescribes fine which may extend to INR 1000/, and with a further fine which may extend to INR 500/- for every week during which breach of condition of license continues.

(iii) DoT Circulars - DoT issues circulars with respect to matters like (i) subscriber verification norms (CAF penalty); (ii) EMF radiation etc. These circulars contain a separate penalty system which again is very steep (e.g. in case of prepaid SIMs the penalty is INR. 50,000/- per violation). Over the years penalty imposed under these circulars have led to extensive litigation between DoT and TSPs. There are thousands of crores of penalty that is currently in litigation across the country.

Additionally, TRAI, *i.e.*, the regulator may impose penalty in terms of TRAI Act and regulations framed thereunder.

40. There can be no doubt that the penalty system followed by DoT is excessive and has the potential of putting in peril the survival of TSPs and the Telecom industry.

41. The danger of imposing high penalty got adequately highlighted in the AGR (license fee dues) litigation, where the TSPs struggled to comply with the Supreme Court order on the license fee dues. Noticeably, while the unpaid license fee dues were approximately INR 22,589 crores, the balance 74 per cent of the total license fee dues of Rs 92,641 crore was on account of interest, penalty and interest on penalty. Such staggering dues not only put the survival of the TSPs in peril but also exposed the banking sector, having substantial exposure to the Telecom industry. In fact, the Union Cabinet had to eventually intervene, rightly so, by first allowing for staggered payment of dues and later extending four-year moratorium[12] and converting interest & penalty into equity for the TSPs whose chose to exercise such option. Such serious financial situation prompted the Union Cabinet to also announce other steps (e.g. rationalization of Bank Guarantees, interest and penalty etc.). All this was done for easing the liquidity and cash flow of TSPs and to help the Banks having substantial exposure to the Telecom sector.

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[12] *Ref.* PIB Press Release 'Cabinet approves major Reform in Telecom Sector' dated 15.09.2021.

42. Clearly, high level of penalty sends a wrong message to the industry and dampen the fragile environment. Not to forget that it also leads to needless litigation and delay in realization of penalty.

43. Thus, in our humble submission there is a dire need for reforms in respect of penalty with the objective that penalty is not used as a source of revenue generation. This theme of penalty not to be a used for revenue generation finds resonance with the Hon'ble TDSAT which in its judgment 28.10.2015 in Petition No. 24 of 2013 (titled Reliance Telecom Limited Vs. Union of India) passed in the case of CAF penalty matters, inter-alia, observed that " *"It is thus well settled that CAF audit is a function of national safety and security. And the penalty for failure to comply with the departmental guidelines in filling up the customer application form and collect of the mandatory PoI and PoA of the customer is meant to be a deterrent for the service provider to ensure the compliance with the guidelines. The corollary is that the CAF audit is not an exercise for generation of revenue and if it is used to that end it would be difficult to defend the action of the licensor as justified or valid."*

Suggestion/Comment:

A. Penalty should be levied only if violation is intentional and leads to unfair advantage for TSP. In any case, DoT must rationalize penalty norms for TSPs. At present penalty for various violations is excessive. Usually, when DoT imposes a high penalty, TSPs usually contest it in court. This leads to delay in realization of amount. DoT would have observed, particularly in case of CAF penalty matters, that lower penalty is generally paid by TSPs. In most cases DoT should do away with penalty all together, as in case of CAF violations.

B. Penalty for violations should not be automatic and instead should be dealt on a case-to-case basis with technical and financial checks. Presently, in the absence of any laid down guidelines, TSPs are often imposed the maximum penalty even if violations are of a minor nature.

C. DoT should streamline the process and rationalize the penalty structure and in doing so, DoT should consider – (i) single penalty provision instead of separate penalty for different violations; (ii) penalty to be classified into two buckets – (a) minor violations; and (b) major violations. There can be list of violations that would fall in each of the two categories; (iii) there should be a reasonable maximum cap on both categories of violations; (iv) first time violation should not attract penalty at all; (v) penalty should be imposed per violation and not per subscriber.

D. The penalty demands issued by TERM cell for alleged faulty/incomplete Customer Acquisition Forms (CAFs) should be dropped altogether as no security issues were created because of alleged deficiencies in CAF and new failproof methods have been devised for customer acquisition.

E. Demands issued by DoT for failure to complete roll out obligations also may be dropped by the department as almost all these operators have exited mobility business and have already paid heavy price.

F. Currently the license provides for a maximum penalty of Rs. 50 Crore for all deviations/violations. It needs to be brought down to Rs.1 Crore. The officials take a very defensive stand of levying maximum penalty of Rs.50 Crore even for minor deviation which leads to protracted litigation which benefits no one. As has been announced time and again by DoT, it may devise a suitable matrix, linking the penalty to the severity of the incident and recurrence of the violation for imposition of financial penalties.

G. Common interpretation of circular/regulation by all concerned. Different CCAs/TERM Cells interpret the circulars issued by DoT HQ differently posing challenging to the TSPs for the resolution of issues. A mechanism may be created for formal representations against such varying interpretations by circles.

H. Similar to Income Tax, DoT should create quasi-judicial authorities to dispose off the cases before it reaches TDSAT. This will save money and time both for the Industry and the Government.

I. Regarding the AGR dues up to 2016-17 as submitted in Supreme Court, Government may make an application to Hon'ble SC pointing out that figures submitted by it in March 2020 along with cabinet decision were provisional and need to be finalized and reconciled in terms of Hon'ble SC judgment of October 24, 2019 by removal of calculation errors in computation of License Fee and SUC. This is another important step in improving the viability of the telecom sector

J. **Multiple Audits:** TSPs are audited by CCAs, Special Auditor appointed by DoT and CAG. In addition to that TSPs are required to file AGR statement audited by Statutory Auditor of the company. As in any other regulation such as Income Tax and GST, DoT/Govt may restrict with submission of reports as audited by the Statutory Auditor and dispense with other audits. This is also in line with observation made by Hon'ble Telecom minister that the sector has matured and does not require close regulatory audits.

K. **Adjustment of payments made to DoT:** TSPs make payments to DoT Circle wise as well as NLD/ILD separately. With respect to situation like DoT raising demands and also refunds, we request that:

   (I) LF/SUC excess payment in one technology should be adjusted against LF/SUC dues in other technology from the date of actual payment, e.g. between CDMA and GSM.

   (II) Excess payment in one circle should be adjusted against LF/SUC dues in other circle/NLD/ILD from the date of actual payment, e.g. refund in Delhi circle should be adjusted towards shortfall in Karnataka from the date of actual payment.

   (III) When there are allocations of central income and other such items, final assessment may result in revised allocations. TSPs should be allowed to submit revised returns and allocate payments between circles/NLD/ILD as appropriate (as long as TSP is a single company). In simplicity, despite circle concept, DoT needs to be treated as one single entity and vice versa.

   (IV) All monies are paid to DoT whether they are circle wise/technology wise either for LF and/or SUC. Hence, DoT should treat them together when it comes to assessments to avoid putting hardship on TSPs using segregation of these payments and artificial shortfall/excess payments

L. Since DoT is considering bringing new law which, we believe, will usher a new beginning for the Telecom Sector, it is imperative that Department of Telecommunications (DoT) brings a closure to legacy issues between DoT and the Telecom Service Providers by offering amnesty /settlement scheme for the incumbent Telecom Service Providers as regards existing disputes with DoT. This would also put an end to endless litigation between the TSPs and DoT.

Standards, Public Safety and National Security

Analysis:

44. Under the present regulatory regime, some of the measures that exists in respect of 'Standards, Public safety and National security' are as follows:

(i) Telecommunication Engineering Centre (TEC) - Functions under DoT and is designated as the telegraph authority for the purpose of administration of Mandatory Testing and Certification of Telecom Equipment (MTCTE) procedure and Surveillance Procedure. TEC is also entrusted with task of preparing specification of common standards with regard to telecom network equipment, services and interoperability. Specifications are released as Generic Requirements (GRs), Interface Requirements (IRs) and Service Requirements (SR). Any Original Equipment Manufacturer (OEM)/ importer/ dealer who wishes to sell or import any telecom equipment in India, is required to obtain Certificate from TEC and mark or affix the equipment with appropriate Certification label.

(ii) National Security Directive on Telecom Sector – Under this TSPs are mandatorily required to connect in their networks only those new devices which are designated as 'Trusted Products' from 'Trusted Sources'. The National Cyber Security Coordinator (NCSC) is the Designated Authority (DA) for the determination of inclusion of a vendor as a Trusted Source, of a Telecom product as a Trusted Product and the methodology for the said inclusion. The Designated Authority makes its determination based on approval of a committee called 'National Security Committee on Telecom (NSCT)' headed by Deputy NSA. The committee consists of members from relevant departments/ministries and has two members from industry and an independent expert. UL has been amended[13] to introduce provisions mandating use of Trusted Products in the telecom network of a licensee.

(iii) Unified License – Chapter VI of the UL read with specific provisions under each 'Authorizations' further provide for security related conditions. Also Cl. 5 of the UL allows DoT to make modifications in the terms and conditions of license if it is necessary or expedient to do so in public interest or in the interest of the security of the State or for proper conduct of the Telegraphs and the decision of the DoT is final and binding in this regard.

45. We believe there exist ample provisions within the UL and other Acts/Rules etc. towards ensuring 'Standards, Public safety and national security'. Also, under UL DoT has a final say when it comes to issues of national security and has reserved rights to make necessary modifications to the terms and conditions of the license.

Suggestion/Comment:

A. There is a need for consolidating provisions concerning 'standards, public safety and national security' in one document. It may be convenient for TSPs and DoT to have all such provisions incorporated in the UL itself. Presently, UL has a separate chapter, i.e., Chapter -VI, dealing with security conditions. DoT should consider incorporating detailed requirements/provisions with respect to 'Trusted Source' in Chapter-VI itself. Also, TEC standards for different telecommunications services should also be incorporated under respective 'service authorization' instead of one having to go through separate documents.

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[13] *Ref.* Amendment dated 10.03.2021

nelco
unlock potential

Nelco Response wrt Consultation Paper on

'Need for a new legal framework governing Telecommunication in India'

We would like to thank DOT for coming up with the consultation paper related to 'Need for new legal framework governing Telecommunication in India'. We are committed to positive engagement in the process by contributing with our inputs. The telecom Sector is primarily governed by *Indian Telegraph Act, 1885*. & The *Indian Wireless Telegraphy Act, 1933*. These laws have helped telecom to flourish in India & to become second largest telecom network in the world, in terms of number of subscribers.

The telecom legal framework is required to ensure that all citizens, users get access to affordable telecom networks and service providers can utilise various technologies to deliver the services to the customers. These service providers bring a mix of capabilities enabled by different technologies that includes Mobile telephony, Satellite communications, Public Wi-Fi, Fibre network etc. DIGITAL INDIA mission will need multiple such access technologies. Each of these bring unique advantages and complementarity to the overall telecommunications infrastructure and capability of the nation.

It is important that the overall regulatory framework addresses the following objectives

- Connectivity to all, be it citizens, enterprise, or government users - irrespective of the location.
- Flexibility and agility of regulatory framework to adapt to changing technology and services trend.
- Ease of doing business for the industry stake holders involved.
- Harmonized with global best practices arrived at international forums like ITU

We hereby present our views wrt few points raised in the consultation paper, pertaining to the Satellite Communication industry:

Simplification of the regulatory framework

New law & rules should be agreed by all stakeholders through a consultative, consensus building process ensuring protection of existing investments and services. New rules should not suspend the existing services, licenses unilaterally unless agreed by existing service providers, including with mutually agreed timelines for implementation of any such new rules.

DoT should focus on easing the regulatory burden and reducing compliance cost to the service providers, which is the theme permeating through NDCP-2018. This, amongst others, includes doing the following:

a) No coercive action: Foremost, there should not be coercive action taken against TSP/telecom infrastructure providers by local/municipal/state authorities like arbitrary sealing of towers or VSATs or electricity disconnection etc. or asking for additional fees wrt towers or VSATs. Currently, the service providers are involved in needless litigation in courts against coercive actions by municipal and local authorities in different States across India.

b) Single window clearance with deemed approval: The current process of issuing approvals/ clearances is time-consuming and cumbersome. It is highly essential that a robust online single-window platform should be made available to the stakeholders and the cases/requests should be processed in a transparent manner within a reasonable stipulated period.

c) For timely processing of applications for various approvals/clearances, concept of deemed approval should be introduced.

Spectrum Management

Spectrum is national resource and should be utilised to deliver connectivity to all including unserved and underserved areas. Different technologies address specific needs of the industry/segment and thus need to co-exist to be able to serve the society & citizens. The spectrum should be made available for each of the relevant technologies and thus the treatment or principle of allocation of spectrum need to be defined accordingly. The objective of the policy should not be just related to increasing the commercial value for government in terms of license fee and/or spectrum auction proceeds etc., but also to enable the use of different telecommunication technologies for serving all applications and geographies including unserved and underserved.

It may also be noted that the overall spectrum required under Satellite Communication services is more efficiently utilised as the same spectrum is shared by multiple satcom service providers, while in case of cellular technology, each of the service providers will need to have its own spectrum in the area of operation.

It may also be noted that Satellite Communication industry is a very small part of the overall Telecom industry, particularly as compared to the cellular services. As such the Satellite Communication industry does not have the ability to procure spectrum in auction by competing with the cellular service providers.

The commercial yield per unit of spectrum may be different for different technologies. As such it is important to have spectrum allocation principles which are well suited for each of the technologies. The global best practices, the way the spectrum is used – dedicated or shared, ability of the specific industry to pay for the same etc., should be considered while deciding on the method of allocation of spectrum to individual technologies. Considering the above, it is important that a holistic view is taken w.r.t spectrum, so that different relevant technologies are allowed to co-exist, prosper, and serve the needs of various Industries/regions of India most optimally.

The spectrum usage is identified collectively at the ITU, wherein India is also a signatory, towards an interference free globally harmonised services enablement for Satellite communications, Mobile services, Wi-Fi and additional services that use the electromagnetic spectrum.

The allocation of spectrum in public interest needs to align with international best practices.

a) For exclusive spectrum use in cellular networks, spectrum auction has been the best tool to ensure efficiency of spectrum usage worldwide.

b) The same method of auction however cannot be used for shared spectrum applications like Satellite communications. The international norm is for administrative allocation of spectrum for satellite spectrum that is aligned and harmonized as per ITU identification. We strongly recommend that India should also follow this principle.

c) Such distinction in assignment of Cellular and Satellite spectrum is consistent with other countries across the world.

d) Some of the main reasons for not auctioning satellite spectrum are that: (i) it is line of sight technology and same spectrum can be shared across multiple Satellite Communication operators and thereby resulting in very efficient use of spectrum (ii) it is used to provide connectivity for underserved locations (iii) provides connectivity for cellular backhaul thus enabling cellular services at difficult terrains

We would also like to emphasise here again that the Satellite Communication services industry cannot sustain by procuring Spectrum through auction in India.

Spectrum should be allowed to be used for specific purpose only for which the spectrum is being taken from the regulator. Periodic review should be done wrt effective utilisation of spectrum and if spectrum is not utilised that assignee should be required to surrender the spectrum back to regulator so that regulator may allocate it open allocations to qualified service provider as per rules. In case the spectrum treatment was to be equal irrespective of technology and it is left to assignee to use as its own wish across various technologies then it may result in monopolistic market practice with only handful of large Telecom operators with deep pockets buying all the spectrum and controlling the overall telecom services in India.

Repurpose of frequency range is not common globally and has done only in select country for very specific need Any repurposing of frequency range will be mammoth task and will involve following factors, which will need to be addressed:

a) Cost: requires will have huge cost to the existing service providers who would have put in crores of investment to build the infrastructure and will have huge cost implications in case of repurposing of the frequency range.

b) Technical & Business viability for existing services: Existing services in the frequency range in question need to be evaluated wrt technical viability to alternate frequency range. Similarly, if the new proposed frequency range is puts it any commercial or technical disadvantage then the business viability for existing services itself may be challenge.

c) Services continuity: It will need to be ensured that existing services on the frequency range in question are not disrupt in anyway while execution of this repurposing of the frequency range.

d) Alignment to Global ITU norms: The compliance & alignment to global ITU norms are important to ensure alignment to available eco-system of equipment, protocols etc. so that consumer of the services continue to get best services at affordable price.

Repurposing of frequency range of different use/technology if required and unavoidable, should not be done at the cost of any existing industry/technology.

Expanding the scope of the USOF

Universal Service Obligation Fund (USOF) was established to ensure that the telecom services are made available in rural and remote areas as well. USOF should fulfil its agenda to serve larger public interest of ensuring delivery of universal telecommunication services to underserved & unserved areas. When still there are thousands of villages which are yet not connected and lacs of villages which are not connected with high-speed telecom links, there is enough for USOF to focus and deliver to its agenda.

We would also like to request that the USOF should also cover the Satellite Communications industry as it is capable of reaching out to the remotest corners of the country and provide the extremely important remote village connectivity obligations for the country and can serve well to the USOF agenda of universal telecom services to underserved & unserved areas.

Adding additional scope for USOF may dilute the core agenda of making telecom available to all underserved and unserved locations. There are multiple vehicles outside of USOF that address the research and development of new technologies and promote employment and training activities for enabling the growth of indigenous companies in the technology space.

Penalties

We agree that Penalties should be proportionate to offences and accordingly new rules need to consider the same. High level of penalty sends a wrong message to the industry and dampen the fragile environment. Not to forget that it also leads to needless litigation and delay in realisation of penalty.

DoT must rationalize penalty norms for Service Providers. At present penalty for various violations is excessive. Usually, when DoT imposes a high penalty, Service Provider usually contest it in court. This leads to delay in realization of amount.

Penalty for violations should not be automatic and instead should be dealt on a case-to-case basis with technical and financial checks. Presently, in the absence of any laid down guidelines, Service Providers are often imposed the maximum penalty even if violations are of a minor nature.

DoT should streamline the process and rationalise the penalty structure and in doing so, DoT should consider – (i) single penalty provision instead of separate penalty for different violations; (ii) penalty to be classified into two buckets – (a) minor violations; and (b) major violations. There can be list of violations that would fall in each of the two categories; (i) there should be a reasonable maximum cap on both categories of violations; (ii) first time violation should not attract penalty at all; (iii) penalty should be imposed per violation and not per subscriber.

Annexure

Tata Communications Limited's response to DOTs Consultation Paper on 'Need for a new legal framework governing Telecommunication in India'

At the outset, we applaud the efforts of the Government in coming out with this important consultation paper on 'Need for a new legal framework in telecom sector' governing Telecommunication service at the juncture when India is at cusp of exponential digital revolution and embarking on a journey of connected future with 5G technology. The various initiatives / reforms have been undertaken in the telecom sector by the Government in last year for creating a conducive legal & regulatory environment for businesses in India, in line with the Government's objective of "Ease of Doing Business" and promoting more investment in the Country. The initiative to identify various processes/ issues in the existing statutory and regulatory framework which entail overhauling the age-old telecom laws and simplification of process coupled with the focus on reducing litigation is a welcome step at this juncture.

We echo the sentiments regarding importance of Telecom sector elaborately mentioned in the consultation paper. Tata Communications itself has metamorphosed from being a telecom player to a digital ecosystem enabler transforming Enterprises in India and globally. The role of telecom sector has expanded from providing voice services, network connectivity to addressing issues related to health, subsidy benefits, education, reach of governance, utility services etc.

The pertinent issues on which comments have been sought from stakeholders under this Consultation paper, would clearly help to achieve world class infrastructure for a thriving telecom industry and digital ecosystem to cater to its market of billion-plus users, and burgeoning Enterprise segment.

Need to retune the existing legal and licensing framework with ongoing technological advances to attract more investments for building Digital and Connected India

In view of ongoing technological advances, the telecom sector is fast evolving from being merely catering to the requirement of network connectivity to provide platform and fabric-based services with the technological advances and innovations. TSPs business focus is swiftly shifting from offering basic network connectivity services to digital and platform-based services. The evolving demands of various customers have led to newer business models and emergence of highly sector specific applications and platforms to cater to their business requirements in a cost-effective manner. To support this changing landscape of telecom market, there is an immense need to revamp the existing regulatory and licensing framework. The present Legal and regulatory framework for telecommunication services is governed by the laws and regulations which were enacted long before India's Independence and all stakeholders have been demanding evolution of the legal framework to keep it in tune with changing technology.

The Covid-19 pandemic outbreak has created an immense need for the telecom services to support the demand of digital services by various Enterprises including Work from Home scenarios which became the 'must-have' requirement for continuity and survival of business and economy. This 'new normal' has changed the landscape the way telecom services have been looked upon mostly as a 'consumer/retail segment' and have realized its importance for Enterprises and Businesses to support the new business models. The existing laws and licensing conditions are created keeping in mind the use of telecom services for individual and same rules/license conditions have been imposed on the Enterprise services whereas the requirement and use of telecom services are different for a retail consumers and business/enterprises to a large extent. Hence, while framing a new legal framework which would replace the existing Acts e.g. Telegraph Act, Wireless Telegraphy Act, the Telegraph Wires Act, the unique requirement for catering Enterprise segment should be kept in mind so that necessary support can be extended to the Enterprises for enabling their functionalities in a more efficient and effective manner.

Undoubtedly, the telecom sector is currently heavily regulated with onerous obligations of telecom licenses in the form of network security, confidentiality of data, reporting requirements, etc. with heavy pecuniary damages and sanctions for non-compliances. For instance, in comparison the rest of the players in the digital marketplace enjoy a regulatory oversight. Privacy & Security of data though has a large-scale impact across all the digital players in terms of their obligations towards their users and customers. In our view the obligations with respect to privacy and security of user data across the entire eco-system should be kept the same. This would be a key to modernizing regulations. Thus, it is important that the new legal framework should be balanced and equally applicable to all the stakeholders of the entire digital services value chain for ensuring level playing field.

The new legal framework governing the relationship between the licensor and regulator should be definitive and transparent. To illustrate through an example, in the current regime there is no timeframe agreed for the DoT to act on the recommendations made by the sectoral regulator and as a result, several key recommendations like TRAI Recommendation on AGR dated 06-01-2015 which resulted in creating non level playing field amongst same class of service providers and led to prolonged litigation. Apart from the same, there are certain key recommendations like TRAI recommendations on E&V band and MWA/MWB of 29-08-2014 which have not been acted upon, resulting in situation of regulatory uncertainty amongst service providers. There should be a time limit within which DoT should consider TRAI Recommendations failing which the TRAI Recommendations should be deemed to be approved. In case DoT does not agree with the TRAI Recommendations it needs to refer back the same to TRAI as per the scheme of the Act. Once the reconsidered view of TRAI has been obtained by the DoT in a time bound manner, DoT needs to take decision on such reconsidered views of TRAI in a timely manner and such decisions should be transparently made available in the public domain.

In this modern and technology era, data driven businesses require consistent and predicable regulation that does not impede the development of new uses of data to meet the evolving needs of Enterprises and end consumers. Therefore, there is an immense need for simplification of present legal and regulatory framework, where a service provider can rely upon practices and processes that are uniform across the markets it serves and the services it seeks to provide the public, the efficiencies gained can continue to drive innovation. In India we may do well in encouraging all new technologies and businesses in the Digital marketplace and adopt light touch and future fit legislation approach equally applicable to all the stakeholders in the digital eco system.

For the newer services, especially, which are in the nature of application services and use licensed network connectivity service as an input service, no license requirement needs to be imposed on such services. One such example which comes to mind is of audio conferencing service which uses telecom resources as input for providing conferencing services, yet, the same is licensed under section 4 of the Indian Telegraph Act.

Present licensing and regulatory framework are more suited to B2C telecom businesses. Need Policy reforms for Enterprise Service Providers as well enabling them to deliver services more efficiently and effectively to their customers

Today enterprises are going through profound upheavals as digital technology rapidly and radically transforms how business engages with the marketplace and stakeholders. Digital Transformation has become essential for growth of any Enterprise and is a key in responding the disruption of work and business ecosystem-especially post pandemic era in the 'new normal'. As per Dell's Digital Transformation Index 2020[1] (surveyed 4000+ business leaders globally) 89% business leaders felt the need of a more agile and scalable IT environment. Customers of Enterprise expects on-demand service which requires hybrid IT services and agile network capability.

Large Enterprises are significant contributors to the GDP of the country. Tata Communications being an Enterprise Service provider, caters to 35% Telecom connectivity requirements of Large Enterprises thereby aiding their expansion and growth and continues to invest in building telecom infrastructure to expand its network reach to address the growth requirements of its Enterprise customers as they expand business deeper in the country.

In view of digital transformation of Enterprises, Tata Communications truly appreciate the telecom reforms brought by Government recently to support Telecom Sector. There is a need of policy reforms for Enterprise Service Providers for enabling them to deliver services more efficiently and effectively to their customers. Some of the suggested policy reforms are simplification of VNO licensing framework, removal of impediments in the present CNPN guidelines to enable larger participation of Enterprises, no Roll out obligation for mid-band and mmWave band spectrum used for Enterprise application services, simplification of procedure for setting of Cable Landing Stations, simplification of Remote Access (RA) permissions in case of RA being granted to the related entity of the licensee, making available delicensed spectrum for use of licensed service providers with the concept of duty cycle etc.

New legal framework must ensure a level playing field among all operators/stakeholders providing similar nature of services

The new legal framework must ensure a level playing field among all operators/stakeholders providing similar nature of services, it should ensure that the legal & regulatory compliance and obligations are similar across all providers providing similar nature of services. OTT Communication service providers have already entered into the domain of Telecom service providers (TSPs) thereby impacting the telecom business significantly - traditional voice / SMS services are getting blurred and replacing with the IP based interactive messaging and app-based voice calls riding on data services. OTT service providers/ International content providers are also providing peering services to licensed ISPs who are using such peering services as upstream transit services. This service is substitutable service by and large of the upstream transit services being provided by licensed ISPs to smaller ISPs. A new legal framework should take into account all these developments and should take action to create level playing field on the basis of same service same rules – whether offered by TSPs or OTT Communication service providers.

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[1] https://www.delltechnologies.com/asset/ru-ru/solutions/business-solutions/briefs-summaries/dt-index-2020-full-findings-report.pdf

In the present regulatory regime, there are various anomalies which needs to be corrected in the new legal framework envisaged for digital communications services on the principle of same service same rule wherein legal & regulatory compliance and obligations should be similar across all providers providing similar nature of services to protect the investments made by licensed service providers.

There should be a single, consistent, and predicable licensing and regulatory framework with future fit regulations replacing service specific rules for ensuring level playing field among all operators/stakeholders in the digital ecosystem providing similar nature of services to protect the investments made by Licensed Service providers. Further, it also needs to be ensured that any change in licensing framework should ensure consistent revenue share policy across service providers in the digital eco-system offering services of similar nature.

New Legal framework should ensure transparent and stable spectrum management enabling larger participation for proliferation of broadband services

The proposed structural and exponential change in the present legal framework should bring not only regulatory stability and transparency but also attract new investments significantly. Spectrum Management is an important policy enabler for Digital India. There is a need to have necessary provisions in place to allow other licensed service providers such as ISPs to participate and bid in future spectrum auctions to promote competition in the market by having more players owning licensed spectrum and competing in the market leading to more broadband proliferation. Any class of licensees should be permitted to buy spectrum, either through auction or through allocation, to satisfy the needs of the services they offer to their customers. Since license and spectrum holding are delinked, anyone buying the spectrum pays for it irrespective of their type of license holding.

Spectrum leasing should also be permitted other than spectrum trading and sharing. 5G spectrum should be allowed to be leased out to other licensed Service Providers by the winners of the spectrum auction which would ensure optimal utilization of the Spectrum, sharing upfront capex cost of the spectrum by number of Service Providers bidding as a Consortia and other such innovative measures leading to higher broadband proliferation. There is an immediate requirement for opening of the 6 GHz spectrum band as delicensed band for Wi-Fi services in line with global practices. To promote Industry 4.0 initiative, there should not be any rollout obligation associated with mid band and mmWave band and should be left to the service provider choice to deploy the spectrum as per the demand of Enterprise specific use cases / applications. Further, suitable microwave spectrums should be immediately made available to ISPs and fixed line access service providers for last mile and middle mile connectivity. Some channels from 15/18 GHz should be made available for such applications without any cost/fee. V & E Band spectrums which have ability to deliver higher bandwidths should also be delicensed for such applications and to be made available on priority. Further, spectrum should continue to be assigned administratively to other licensed service providers like ISPs, Satellite Service Providers etc. to use the same for purpose of last mile connectivity. Any legal hurdle should be overcome by way of legislation on the issue.

New law to provide a robust regulatory framework to obtain RoW in a uniform, non-discriminatory manner for establishment of telecommunication infrastructure

As we move on to better technologies such as the deployment of 5G, their full value can be achieved only with smooth connectivity. Effective right of way is a pre-requisite to achieve this to enable expansion of telecommunication network and improvement of telecommunication services. A new law needs to provide a robust regulatory framework to obtain Right of Way in a uniform, non-discriminatory manner for establishment of telecommunication infrastructure. Such a law also needs provisions to create an effective dispute resolution framework relating to Right of Way. Further, in line with the vision of PM Gati Shakti initiative, the new framework needs to incorporate provisions for establishing common ducts and cable corridors in infrastructure projects to ensure integrated development of infrastructure. Recent reform measures undertaken by the Government in existing ROW rules by way amendment are aimed at bringing down the time and cost of deployment of telecom infrastructure and expected to facilitate rapid expansion and upgradation of telecom networks and therefore improvement in the quality of services. The Telecom licensees is to submit RoW applications on different platforms of State/UTs and this amendment enable a single window single window portal for all telecom related RoW applications which we believe would reduce multiplicity of compliance and facilitate easier approvals.

There is a requirement to come up with new law by Central Government to clear the ambiguity regarding the jurisdiction issue in ROW matter. The new law should clearly stipulate that telecommunication is a central subject [Entry No. 31 of List-I of the Seventh Schedule of the Constriction of India] and Centre has exclusive privilege to provide for the guiding principles in relation to establishment of telecommunication infrastructure in India. Also, the Indian Telegraph Act, 1885 provides that the Central Government may grant licenses to establish or maintain or work a telegraph within any part of India. The States have been exercising their rights as local authority which has the right to govern the land and health aspects under the Constitution of India. However, the approach adopted by the States so far has been revenue centric.

New law needs to enable simple merger and acquisition framework allowing for any licensee or registered entity to comply with the scheme for restructuring with minimal compliance requirements

The premise of future M&A guidelines should be that there should be an easy entry and exit for the investors from the Indian telecom sector. The Government needs to provide a simplified exit policy for TSPs for closure of business through merger and de-merger. It should be done in a time bound manner and to ensure the companies do not lose out on the value of assets they have created due to delays in regulatory approvals. In case a TSP does not hold any spectrum, winding down of such telecom business should follow only NCLT process without any additional conditions or approvals from DoT. Additionally, there should be easy exit for the listed companies. The current regime of Reverse Book Building makes it almost impossible to delist it from the bourses. This needs to be simplified so that a listed entity can close their business by way of merger/de-merger.

Further, the proposed law dealing with mergers and acquisitions should lay down a simple procedure and should have single nodal statutory authority in place to enable a smooth transition of mergers and acquisitions in telecom sector and at the same time, ensure that no monopoly is created.

New law needs to address insolvency related issues in telecom sector with a focus on continuity of service

In the new law, there is a need to ensure that insolvency proceedings should not lead to suspension or termination of the license/authorization/assignment as long as: (a) telecommunication services continue to be provided and (b) there is no default in payment of dues in relation to the telecom license or use of spectrum. This crucial balance between continuity of service and safeguarding public interests needs to be addressed under a new framework.

Companies in regulated sectors like telecom undergo unique challenges. Various laws still contain gaps and ambiguities, and reconciliation with the provisions of the code becomes a challenging task. Therefore, while drafting new law regarding insolvency, it is essential to create synergies among specific regulatory laws with the provisions and the process envisaged under the code, for effective resolution of corporate debtors belonging to specific regulated sectors. The proposed new law should ensure consistency with the provisions of the code.

USO fee should not be construed as levy, rather it is contribution made by Licensees and existing amount available in USO fund is sufficient

USO fee should not be construed as levy, rather it is contribution made by Licensees and existing amount available in USO fund is sufficient to connect the balance unconnected villages. Presently, there is a sufficient amount of Rs 58569.89 crores is available in the USO fund and there is immediate need for rationalization of USO levy. Presently, all licensees are paying 5% of their AGR towards USO levy under licensing obligation since introduction of revenue sharing regime for rural coverage. Presently, there is a sufficient amount of Rs 58569.89 crores is available in the USO fund as on 28 February 2022. Considering the fact that the sufficient fund is available with the Government, thus, USO levy should be immediately reduced to 3%, in accordance with TRAI recommendations dated 06th January 2015 with an ultimate objective of totally doing away with the levy in next 2-3 years. Further, adequate provision should be made to allocate funds from Universal Services Obligation Fund (USOF) for incentivizing Licensed Service Providers who are promoting connectivity to rural and remote areas especially with alternative and innovative technologies especially two million hotspots in rural area as envisaged in NDCP-2018.

New law needs to consolidate and update the various provisions on penalties and offences.

The penal provisions should only be made applicable for critical breaches of security issues which is likely to impact national security. Financial disincentives / penalties should be reduced- graded penalty system as per the severity of non-compliance. In our view, Penalties should be based on severity of non-compliance and its overall impact on the national security. Currently the provision of Unified license provides for a maximum penalty of Rs. 50 Crore/instance for all deviations/violations. There is a need to review the same in view of the nature of severity of the incident and same should be brought down to maximum penalty of Rs.1 Crore. As has been announced time and again by DoT, it may devise a suitable matrix, linking the penalty to the severity of the incident and recurrence of the violation for imposition of financial penalties. The new law should ensure that the amount of penalty imposed on any license for the violation of the license clause should be linked to severity and recurrence and should be commensurate with the loss to the Government/Exchequer in accordance with the Contract Law.

New law should have important place for Standards, Public safety and national security aspects

Telecom services are essential services and considered as critical communication infrastructure. Therefore, Tata Communications agrees that there is an urgent requirement for a new law that would have appropriate provisions for addressing situations of public emergency, public safety and for taking measures in the interests of national security. Such a law needs to provide enabling framework for the Central Government to prescribe relevant standards for telecommunication equipment, telecommunication services, telecommunication network, telecommunication infrastructure. The aim is to ensure public safety. This is all the more crucial given the widespread use of telecommunications, whether for education, or entertainment, or tele-medicine, or facilitating e-mandis.

Government should create a model plan considering telecom infrastructure as an essential service and critical communication infrastructure. It is recommended that Infrastructure status given to telecom sector should be accompanied by associated benefits such as assured grid power at Industrial rate, consider Fibers as protected National assets etc.

Our point wise inputs/suggestions on various aspects of consultation paper are given below:

What a new Law needs to address and Simplification of the existing Regulatory framework:

- There is an immense need to review outdated regulations, licensing provisions, age-old Acts and laws Telegraph Act, Wireless Telegraphy Act, Telegraph Wires Act which are no more relevant to present market structure and replacing them with one single Act/ law (like IT Act 2000 as amended from time to time). The provisions of the Act should be futuristic, keeping in mind the upcoming technological advancement so that it enables long term business perspective, investment in the sector etc.

- The new law should not be merely a new Telegraph Act but should consider the evolved services being offered in the digital era and hence to be termed as Digital Communications Act encompassing an overarching concept of services being offered in the digital communications domain. It should be balanced and equally applicable to all the stakeholders of the entire digital services value chain for ensuring level playing field. The new legal framework should re-define the telegraph/telecom services considering the evolving business models and customer segments. The services which should be regulated or termed as telegraph/telecom should only comprise of telecom connectivity and not the application/services which use the connectivity as underlay to provide their services to end customers.

- The current definition is quite wide and open ended which brings in its ambit such services also, which can be provisioned by other players in the market without taking any license and leads to the complex business environment for the entities to do telecom business in India. To Illustrate this with an example, if a licensee desires to provide M2M services, would be required to pay licensee fees whereas in case of a M2M Service provider duly registered with DoT can provide such M2M services without paying any license fees. Moreover, M2M services should not fall under the telecom license framework and should be considered as application services. This discourages the licensed entities to venture in new field of technologies and to overcome the same, separate new entities are incorporated which just add to the compliance burden. In the era of digital revolution, the telecom laws should keep its pace with the modern technology with the ultimate boost to the sector by giving regulatory certainty and agile decision making. Similarly, services provided by the VNO licensees are based on the telecom resource/connectivity of their respective network service operators which are already licensed. Hence, instead of having a VNO license regime as a replica of existing UL regime, it should be a simplified framework catering to the services provided by the VNOs without any requirement of inspection, reporting and rigorous compliance conditions.

- The Service Providers should be categorized basis the nature of service and customer segment they intend to serve. Hence, there should be class of license under the Digital Communications Act clearly classifying the related terms and conditions for each service/customer segment. The present license should be simplified wherein single license should enable all the services instead of multiple chapters/service authorizations. This would give flexibility to the licensee to launch any service to cater the requirement of its customers. Hence, the license should have a general chapter and service specific provisions within same, with single Bank Guarantee, minimal entry fee etc.

- TDM to IP based interconnection, technology agnostic interconnections are some of the requirements to remove any artificial barrier. Also, services are moving to the cloud-based platforms whereas the existing license condition and various guidelines e.g. OSP Guidelines have not catered to the role cloud based platforms are playing in delivering of telecom services to various customers, thus, the new framework should consider the cloud based services and various use cases in telecom sector.

- The new legal framework needs to take into account the technological developments in the internet value chain and variety of services available to consumers – whether offered by TSPs or OTT Communication service providers. The single licensing and regulatory framework should have future fit regulations replacing service specific rules ensuring level playing field among all operators/stakeholders providing similar nature of services to protect the investments made by Licensed Service providers. Same Service Same Rule principle is required to be adopted in the new framework to ensure natural justice, level playing field and equal opportunity to all the entities who are in the business of providing communication services.

- Any need for mandatory registration/authorization for service providers should be only to create a level playing field and if entities using unlicensed spectrum to provide various services does not require a license, same should be applicable for those who are providing IoT/M2M through LPWAN network using unlicensed band. Onerous regulatory requirements complicate the simplistic space of unlicensed LPWANs and hinders the ease of operation it offers. There are close to no examples even in the global landscape where LoRaWAN enabled M2M service providers are mandated to comply to licensing requirements especially when they operate in an unlicensed spectrum.

- The sharing of active infrastructure in the core networks of wireline telecom operators shall enable the delivery of low-cost voice, data, and internet products which are essential for this sector to sustain and flourish.

- A simplified process/definition of revenue should be given for calculation of the license fee. The said revenue should be from those telecom activities for which a license is mandatory, and all other revenue should not even be considered as the GR from the license. Post the same, pass through (payment made to another licensee) should be deducted to arrive at the AGR on which the said percentage of license fee can be calculated. We also suggest that any type of payment, if made to another licensee, on which such licensee is bound to pay license fee, should be considered as pass-through charges. Also, Government may consider bringing down the license fee to zero percentage of ApGR/AGR for those services that are delivered through Wireline. We are of the view that there should be one license fee covering all the services under the single license as suggested above to meet the administrative cost incurred for DoT/TRAI operations by the Government. The suggested license fee should be a fixed amount (i.e. the administrative cost incurred w.r.t. DoT/TRAI/TDSAT establishments) proportionately divided amongst all licensees, else, the same can be capped at 1% of AGR of the licensees.

- A futuristic framework of telecom laws can look at facilitating ease of doing telecom business in bringing alignment in some of the financial compliance and remittances of regulatory/license related fees. Accordingly, it is submitted to evaluate a framework for all payments to be made by the licensee jointly between Ministry of Telecommunications, Ministry of Finance to create a single window remittance channel for Telecom services providers channelizing all statuary payments including license fee, taxes etc. through the same authority as the nodal authority.

Similarly, a single window grievance redressal mechanism should be there for the licensees to resolve all its remittance related issues in a time bound manner. This suggested single window mechanism will help attracting more investments in the country under Ease of Doing Business (EoDB).

- Mechanism of periodic review of various licensing clauses of UL and UL VNO in line with technology advancements and evolving market structure, Simplification of various clauses, reduction of compliance burden. It may be noted that the new framework should have provisions keeping in mind that the licensees conduct their business in a legitimate manner instead of making the provisions burdensome and restrictive to address any illegality which may be committed by any of the licensee. The legal framework should be enabler and supportive towards those who follow the law of the land rather than those who circumvent the regulations. For such licensees who may circumvent the rules/regulations, case-to-case basis approach can be adopted by the DoT to deal with any such illegality/non-compliances.
- License conditions related to security of network and issues which is important from National Security Aspects (e.g. Trusted Cell, Lawful Interception & Monitoring, Internet Monitoring System etc.) can remain intact and compliance to the same can be mandated, however, the various technical and operational compliance requirement under license conditions must be eased to reduce compliance burden on the licensees. For instance, it is suggested that only target-based monitoring should be done instead of mandatory requirement of monitoring 100% Internet traffic. There is a need to have separate provisions for Internet traffic Monitoring pertaining to retail/individual customers and Enterprises as both have vastly different usage of the Internet services. Similarly, the content streaming traffic of OTT players which is majorly one way video consumption by the customers should be kept out of the purview of any monitoring requirements as these are the contents which a user is consuming through the apps of such OTT providers.
- A futuristic telecommunication framework of the country should strive to facilitate security innovations which enable framing of standards and guidelines both within the country and India acting as a leader in this space enables for international cooperation.

Spectrum Management:

- In order to promote competition in the market by having more players owning licensed spectrum and competing in the market leading to more broadband proliferation, the necessary provision should be made in the forthcoming Spectrum Auctions to allow ISPs to participate and bid in the future spectrum auctions.
- Holding of spectrum should not be treated as a privilege for the few operators. Any class of licensees should be permitted to buy spectrum, either through auction or through allocation, to satisfy the needs of the services they offer to their customers. Since license and spectrum holding are delinked, anyone buying the spectrum pays for it irrespective of their type of license holding.

- We are of the view that for spectrum allocated to licensees through auction on market determine price, then same should not have any Minimum Roll Out (MRO) obligations as it adds unnecessarily CAPEX and making the business case unviable for participation in the auction or entry into the market. Moreover, Enterprise business case does not support any MRO requirement as the same is based on the customized network requirements of Enterprise customers which is entirely different from retail segment where operators roll out the network and then acquire customers to provide its services. Hence, any MRO obligation effectively rules out the Enterprise Service providers from participation and bidding in the spectrum auctions thereby creating an artificial regulatory entry barrier. However, if Government intends to continue with MRO obligations, then the same should be based on the application specified and not uniform across the spectrum band.

- There should not be any rollout obligation associated with mid band and mmWave band and should be left to the service provider choice to deploy the spectrum as per the demand of Enterprise specific use cases / applications. This is also evident from the recently concluded spectrum auction wherein 1770 MHz spectrum in mid-band and 17350 MHz spectrum in mmWave band remain unsold across all LSAs thereby not only a revenue loss to Government exchequer but also an inefficient use of such scarce natural resource.

- 5G spectrum should be allowed to be leased out to other licensed Service Providers by the winners of the spectrum auction which would ensure optimal utilization of the Spectrum, sharing upfront capex cost of the spectrum by number of Service Providers bidding as a Consortia and other such innovative measures leading to higher broadband proliferation. Moreover, existing spectrum sharing guidelines should be simplified and enable sharing of spectrum among all Licensees granted license under Section (4) of The Indian Telegraph Act, 1885 without mandate of having entities in same spectrum band. Further, we are of the view that in case, if other sharing licensee does not have any spectrum at all then also spectrum sharing guidelines should allow sharing of spectrum with such licensee thereby removing this artificial barrier.

- In parallel to IMT - 5G enablement, WPC, DoT must also adopt other broadband enabling technologies like Wi-Fi 6E (6 GHz band) to ensure and expedite the broadband proliferation in India to support all digital applications.

- On a careful study of the CNPN guidelines, we find that there are some concerns which can act as impediments to deprive the Enterprises and Industry from the intended benefits of these guidelines and may defeat the broad objective of introduction of setting up of captive non-public networks in the country.

- Necessary provision should be made in forthcoming spectrum management framework to address issue of replacement spectrum wherein an entity holding spectrum is required to vacate it so that Govt. can allocate it to other entities (through auction or otherwise).

- Time period to allocate experimental license for outdoor radiating testing should also be reduced in line with the non-radiating license. Also, the experimental licenses should provide continuity (option of extension without going through the rigorous process of getting the extension).

Suitable microwave spectrums should be immediately made available to fixed line operators for last mile and middle mile connectivity. Some channels from 15/18 GHz should be made available for such applications without any cost/fee. Spectrum should continue to be assigned administratively to other licensed service providers like ISPs, Satellite Service Providers etc. to use the same for purpose of last mile connectivity.

Right of Way (RoW):

- Uniform and nominal ROW charges across Central Public Sector undertakings such as Railways, NHAI, etc. The Gatishakti online platform should be extended to CPSUs such as Railways etc. for Row Applications and affordable RoW rates should be applied since the current Railway RoW charges are very high.

- The new legal framework should establish a Nodal agency like DoT LSA field units to coordinate and resolve RoW permission issues.

- A central agency such as National Broadband Mission in DoT HQ should be empowered with legal backing to monitor the success of the RoW and direct the States / PSUs for uniformity in charges, single window, time bound clearance and resolve the ROW disputes as well Nodal agency should ensure that service providers do not face any problems/ hurdles in obtaining a "No Objection Certificate" (NOC) from various concerned authorities.

- There should be common policy for all central government bodies, state government bodies and local authorities. And one central co-coordinator at each district level with direct supervision of DoT need to be created with precise timeline to grant permission for RoW.

- Right of way charges should be enabled to be paid over a period of 15 years. Fiber Capacity should be allowed to be shared and transferred without need of additional Right of way charge. This would increase value of investment made by infrastructure creator in Fiber infrastructure.

- There should be a common ducting, in dense urban areas particularly, by the side of the roads, implemented by the town planning agency.

- Currently all these agencies (water, gas, electricity etc.) work in their own silos which results in disruption of one or more essential services. There should be strict governance to bring proper coordination among these agencies to accord ROW permissions.

- For any new town planning process, common utility ducts infrastructure should be created for Telecom and other essential services considering minimum 25-30 years of growth needs so that there is no need to disrupt the fundamental infrastructure every now and then the way it happens today in every city.

- Through the new law, need to ensure that every new construction (private/public buildings) should mandatorily have provisions for provision of necessary digital telecom infrastructure.

- A single window clearance is must for processing of all RoW permission applications by leveraging digital means to bring transparency and predictability with minimum TAT -30 days.

Framework for mergers, acquisitions etc.:

- We agree with Government's view that there is a need for a new law to allow for any licensee or registered entity to comply with the scheme for restructuring as provided under the Companies Act, 2013, and simply inform the DoT, as required. At the same time, adequate framework should have provisions to ensure that such mergers and acquisitions do not distort the market structure to the disadvantage of the end customer.

- The merger and acquisition in the telecom sector are considered to be horizontal mergers, because both the companies deal in the same line of business. In the majority of developed and developing countries, mergers and acquisitions in the telecommunications sector have increased which also resulted in the creation of jobs.

- Proposed law dealing with mergers and acquisitions should lay down a simple procedure and should have a single nodal statutory authority which should enable a smooth transition of mergers and acquisitions in telecom sector.

- The premise of future M&A guidelines should be that there should be an easy entry and exit for the investors from the Indian telecom sector. The Government needs to provide a simplified exit policy for TSPs for closure of business through merger and de-merger. It should be done in a time bound manner and to ensure the companies do not lose out on the value of assets they have created due to delays in regulatory approvals.

- In case a TSP does not hold any spectrum, winding up and dissolution of such telecom business should follow only NCLT process without any additional conditions or approvals from DoT.

Provisions pertaining to Insolvency:

- We completely support that there is a need to ensure that insolvency proceedings should not lead to suspension or termination of the license/authorization/assignment as long as: (a) telecommunication services continue to be provided and (b) there is no default in payment of dues in relation to the telecom license or use of spectrum. This crucial balance between continuity of service and safeguarding public interests needs to be addressed under a new framework.

- Companies in regulated sectors like telecom undergo unique challenges. Various laws still contain gaps and ambiguities, and reconciliation with the provisions of the code becomes a challenging task.

- While drafting new law regarding insolvency, it is essential to create synergies among specific regulatory laws with the provisions and the process envisaged under the code, for effective resolution of corporate debtors belonging to specific regulated sectors.

- The proposed new law should ensure consistency with the provisions of the code. Ensuring a harmonized interplay of laws, rather than a myopic, unidimensional application of law, is the key to ensuring effective resolution for corporate debtors in terms of the code in regulated sectors, thereby achieving the common goals of revival of national assets and promotion of public interest.

Expanding the scope of the USOF:

- USO fee should not be construed as levy, rather it is contribution made by Licensees and existing amount available in USO fund is sufficient to connect the balance unconnected villages.

- USO levy should be immediately brought down to 3%, in accordance with TRAI recommendations dated 06-01-2015 further with an ultimate objective of totally doing away with the levy in next 2-3 years.

- Adequate provision should also be made to allocate funds from Universal Services Obligation Fund (USOF) for incentivizing Licensed Service Providers who are promoting connectivity to rural and remote areas especially with alternative and innovative technologies especially two million hotspots in rural area as envisaged in NDCP-2018.

Penalties:

- Penalties should be based on severity of non-compliance and its overall impact on the national security. Currently the provision of Unified license provides for a maximum penalty of Rs. 50 Crore/instance for all deviations/violations. There is a need to review the same in view of the nature of severity of the incident and same should be brought down to maximum penalty of Rs.1 Crore. As has been announced time and again by DoT, it may devise a suitable matrix, linking the penalty to the severity of the incident and recurrence of the violation for imposition of financial penalties.

- The new law should ensure that the amount of penalty imposed on any license for the violation of the license clause should be linked to severity and recurrence and should be commensurate with the loss to the Government/Exchequer in accordance with the Contract Law.

- Common interpretation of circular/regulation by all concerned. Different CCAs/TERM Cells interpret the circulars issued by DoT HQ differently posing challenging to the TSPs for the resolution of issues. A mechanism may be created for formal representations against such varying interpretations by circles.

- Similar to Income Tax, DoT may create quasi-judicial authorities to dispose of the cases before it reaches TDSAT. This will save money and time both for the Industry and the Government.

Standards, Public Safety and National Security:

- Government should create a model plan considering telecom infrastructure as an essential service and critical communication infrastructure. It is recommended that Infrastructure status given to telecom sector should be accompanied by associated benefits such as assured grid power at Industrial rate, consider Fibers as protected National assets etc.

- There is a need for consolidating provisions concerning 'standards, public safety and national security' in one document. It may be convenient for TSPs and DoT to have all such provisions incorporated in the UL itself. Presently, UL has a separate chapter, i.e., Chapter -VI, dealing with security conditions. DoT should consider incorporating detailed requirements/provisions with respect to 'Trusted Source' in Chapter-VI itself.

- Also, TEC standards for different telecommunications services should also be incorporated under respective 'service authorization' instead of one having to go through separate documents.

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From
Raunak Maheshwari
Extreme Infocom Pvt. Ltd.

To,
Shri Naveen Kumar,
Joint Secretary – Telecom
Department of Telecommunications

Subject: Comments on Consultation Paper on 'Need for a new legal framework governing Telecommunication in India.'

Dear Sir,

Extreme Infocom Pvt. Ltd. is a holder of NLD and ISP-A Universal Licences. The company is operating Extreme IX (www.extreme-ix.org) - India's leading Internet Exchange Provider. Extreme IX is serving peak traffic of about 1.6 Tbps (www.extreme-ix.org/technical/statistics/) in 35+ Points of Presence across 6 cities - Mumbai, Delhi NCR, Chennai, Bengaluru, Hyderabad and Kolkata.

We are committed to bringing India up to speed and making India a global hub for internet content, services, and apps by providing world class peering solutions across all states of India.

As we move towards India's techade, we are encouraged to see the department's intentions in updating India's telecom framework. With India being the second biggest telecom market, digitization and technology permeating both private and state services, and the growing number of Indians coming online, there is a need to ensure that telecom regulations in India are updated keeping in mind the emergence of new technologies and global standards around the world. We also appreciate the goal of drafting new legislation in plain and simple language, as it will help to ensure accessibility for citizens and allow for participation from a wide range of stakeholders.

In the consultation paper, the department has acknowledged the evolution of telecom regulation in jurisdictions around the world, and we would like to specifically suggest the European Electronic Communications Code 2018 (*EU Code*) as a benchmark to look at for best practices in telecom regulation.

In this regard, we would like to share a few suggestions on the current subject areas identified by the department in the consultation paper.

1) What a new law needs to address?

In recent times, and specifically during the COVID-19 pandemic, the telecom sector has made significant contributions to India's GDP and growth, both through direct contributions, as well as by enabling other sectors.[1] In this context, it is important that the sector be regulated in a manner that facilitates growth and aligns with global best practices. Any new legal framework should

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[1] https://telecom.economictimes.indiatimes.com/news/telecom-sector-enabling-35-of-indias-gdp-in-covid-19-times/75514669

a) Enable the continued growth of the telecom sector, and make it easier for new entities of all sizes to enter the market and allow for all entities to provide new services to consumers.

b) Focus on defining regulatory guardrails for the sector to function, while prioritising consumer interest, innovation, growth and expansion of services and flexibility to implement new technology developments.

2) **Simplification of the regulatory framework**

With reference to simplifying the regulatory framework, our suggestions are as follows

a) Restrict specific licensing requirements to only two kinds of services
    - Which involve the use of any scarce or limited resource, like spectrum or numbering plans.
    - Which pose a significant risk to public health, such as copper networks which can cause electrocution, or mobile towers that may cause health concerns due to radiation beyond a certain threshold.

Other digital communication networks or services may be subject only to **general authorization**. Typically, under a general authorization, individual authorizations are not required except for specific services where special permissions may be required. Under this construct, general conditions to provide services along with basic rights and obligations are defined, and entities which qualify under the general conditions can launch services by notifying the competent authority, without applying for explicit approval.

The conditions and obligations imposed under any form of authorization should be non-discriminatory, transparent, and proportionate. The criteria and procedure for imposing such obligations should also be referred to in the authorization.[2] Moreover:

b) It is recommended that any charges or fees for processing applications or initiating services be limited to the purpose of compensating the authority for its costs of regulation and set on a cost recovery basis.[3] The fee should not be imposed in a manner which acts as a barrier to entry for the market and limits competition or be seen as a source of additional revenue for the government. Rationalizing fees to reflect only the cost of administration and regulation will make it easier to expand telecom services and boost overall economic growth, while also resulting in higher revenue collection for the government through taxes and levies on different services.

c) In case the competent authority intends to make any changes to any regulatory provisions which may have a significant impact on the relevant market, all interested parties must be given an opportunity to comment on the same, within a reasonable period, which may be decided based on the complexity of the matter, but should not be less than 60 days.[4]

d) It is recommended that the government imposes minimum restrictions on the ability of undertakings to negotiate technical and/or commercial agreements for access or interconnection in accordance with the law. Access and interconnection can help to make services which involve interaction between different entities more economically feasible and enable the expansion and improvement of services to consumers.[5] For example, in Jamaica, linking Cable and Wireless Jamaica's (CWJ's) cellular and fixed line networks, allowed a cellular customer to communicate not only with existing cellular subscribers but also with CWJ's fixed line telephone customers and vice-versa.[6]

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[2] Art. 13(1) EU Code

[3] Art. 16(b) EU Code

[4] Art.23 EU code

Excessive restrictions on technical/commercial agreements can often lead to a reduced ability to offer good quality telecom related services. For example, mixing of IP and PSTN services is prohibited in India. The ability to mix IP and PSTN services would allow license holders to provide improved quality of services, and therefore in such cases restrictions on technical agreements should be minimal (and preferably technology agnostic).

While in most situations minimum restrictions should be the norm, we would also like to acknowledge that there are certain situations where some restrictions on technical/commercial agreements are desirable. For example, in cases where one entity enjoys significant market power, or builds a gatekeeping position for itself in the market, it becomes incumbent on the authorities to ensure that the entity does not misuse its market power to the detriment of other ecosystem players. Therefore, an updated framework for regulation of agreements on access and interconnection should ensure that any upstream or downstream agreements for infrastructure sharing are based on non-discriminatory and transparent terms. This can help maximize the use of existing capabilities, reduce operational costs, increase competition, expand coverage, and improve quality of service standards.

e) The current approach of dividing different regions in the country into different telecom circles may be revisited in light of the increasing penetration of telecom services in India. This practice was started in 1995, based on the potential of a specific circle to generate revenue and also to enable targeted policy formulation and implementation of the policy objectives of the government.[7] Considering the increasing demand for internet and digital services which are now not circumscribed by borders, this may no longer be an issue. There are additional issues such as compliance burden, overlapping jurisdictions, obligation to report to the Term Cell of a circle beyond a Company's place of business despite having a class 'A' licence, increased investment burden as the entity has to maintain separate datasets for each circle of operation and also have different servers for storing such data for each circle, etc. If a specific and rational justification for such categorization is not found, then it is suggested that this practice may be done away with for the sake of ease of doing business.

3) Spectrum Management

We are broadly in agreement with the current elements suggested for spectrum management in the consultation paper. Additionally, we would like to suggest some additional elements to consider for regulation of spectrum management:

a) Any measures or directions, with respect to spectrum management and allocation, taken by the Competent Authority, should be based on

- Promoting market development, competition, and maximising consumer benefit
- Effective and efficient use of spectrum

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[5] Art. 59, EU code

[6] https://our.org.jm/wp-content/uploads/2021/02/interconnect.pdf

[7] https://cis-india.org/telecom/resources/licensing-framework-for-telecom

- Developing stable and predictable investment conditions for existing and prospective spectrum users when deploying networks for the provisions of digital communication services which rely on spectrum[8]

b) Flexibility in the use of spectrum can be achieved by the use of spectrum sharing techniques to enable new services to be launched without the need to reassign frequencies from their current use. As new technologies and applications are developed, flexibility in spectrum policy can allow for the deployment of different services, which can allow consumers to benefit from new technologies, and enhance access to, and quality of connectivity.

In the United States, the Federal Communications Commission (FCC), had declared in 2002 that "increased flexibility will be a key component of any policy that successfully promotes the efficient use of spectrum."[9] In line with this mandate, the US does not prescribe specific wireless technologies to be used with specific spectrum. Due to the use of dynamic spectrum sharing, carriers can deploy both 4G and 5G concurrently in the same frequency band and allocate bandwidth as needed[10]

Germany is also taking the harmonization approach towards flexible frequency regulation by prioritizing service and technology neutral licenses.[11] The UK has committed likewise with the objective of reaching 21 percent of spectrum that is flexible.[12]

c) Consistency with International Allocation Agreements to ensure comparable costs and service integration.[13] As per the International Telecommunication Union (ITU) "the harmonization of frequency allocations at the global and regional levels can bring significant benefits to consumers, as manufacturers can produce devices and equipment at greater scale, lowering their costs, and consumers can use their devices in different countries, effectively permitting the use of roaming. For example, the results of the WRC-19 (World Radiocommunication Conference) included several important spectrum decisions, especially related to new technologies, such as new frequency allocations for HAPS and NGSO satellite systems. The conference also identified additional frequency bands for use by IMT to foster the deployment of 5G applications."[14]

4) Right of Way

a) Applications for the granting of the Right of Way should be decided based on simple, transparent, and publicly available procedures, applied in a non-discriminatory manner, and all decisions on applications should be taken within a period of six months, except for cases specified by regulation, for example, in the case of the requirement of land acquisition.[15] Any conditions attached to such a right should be based on the principles of transparency and non-discrimination.[16]

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[8] https://openknowledge.worldbank.org/handle/10986/13278

[9] https://www.fcc.gov/sptf/files/SEWGFinalReport_1.doc

[10] https://www.fiercewireless.com/wireless/industry-voices-entner-u-s-flexible-spectrum-policy-gets-it-right

[11] https://publications.iadb.org/publications/english/document/Spectrum-Management-The-Key-Lever-for-Achieving-Universality.pdf

[12] Ibid.

[13] Supra 6

[14] https://digitalregulation.org/spectrum-management-key-applications-and-regulatory-considerations-driving-the-future-use-of-spectrum/

[15] Art. 43 (1)(a), EU Code

[16] Art. 43 (1)(b), EU Code

b) In case of rights granted to any entity, the competent authority may also impose obligations related to co-location and sharing of network facilities, though such imposition should only be done on specified and limited grounds, and applied equally and transparently to all similar applications. As an example, such obligations may include the requirement to offer the use of built infrastructure to different service providers on similar terms and conditions.

Further, in case of limited possibilities of rolling out infrastructure where only one or a select few entities get the right of way then there must be an obligation to share such infrastructure. For example, if a Metro Rail Corporation allows everyone to install fibre then no question of sharing arises. However, if such a right is given only to a select few entities, then with that right there must be a corresponding obligation to share the infrastructure with other service providers who are likely to build services on top of this base infrastructure.

5) Provisions pertaining to Insolvency

The issue of insolvency related disputes in the telecom sector and whether telecom spectrum can be subjected to proceedings under Indian Bankruptcy Code (IBC) has been a long-standing dispute. As per National Company Law Appellate Tribunal (NCLAT)'s order dated 13th April 2021 (in CAAT (I) 733/2020), spectrum, being an intangible asset of the licensee/Telecom Service Providers, can be subjected to insolvency/liquidation proceedings but the licensee/Telecom Service Providers cannot be considered the owner of the spectrum.

When a company undergoes insolvency proceedings, all pre-Corporate Insolvency Resolution Process (CIRP) dues (including statutory dues) are required to be dealt with under a Resolution Plan. The issue that arises is whether or not the spectrum license held by the Company will qualify to be an asset and accordingly be included in the resolution plan. While IBC does not define 'assets', different provisions explain the same in different contexts. For instance, as per Section 18(f), assets include intangible assets. However, Explanation to Section 18 excludes assets owned by a third party which are in possession of the Company under trust or contractual arrangement. Thus, to determine whether a spectrum license is an asset of the Company, the crucial point to answer is whether the Company holds ownership over such license or whether it will be considered as holding it under trust/contractual obligation on behalf of a third party (i.e., the Government in this case). In case of the former, such a license will form part of its assets and in case of the latter, it will be excluded.

Though the NCLAT in the above-mentioned order has ruled against spectrum being a part of the Company's assets, this issue is now pending in appeal before Supreme Court and has therefore not attained finality.

Given this context, the key issue that needs resolution is the treatment of the right to use spectrum as an asset of the Company. Besides addressing this issue, there is seemingly no other need for a specific insolvency law for the telecom sector. This is also because Section 238 of IBC as it stands today contains a non-obstante clause which gives it an overriding effect over any other law inconsistent with it. Thus, Section 238 provides that the Code shall have an overriding effect notwithstanding anything inconsistent contained in any other law. This makes it clear that such issues shall be subject to proceedings under IBC notwithstanding anything to the contrary contained in the Licence Agreement or other DOT Guidelines such as Spectrum Trading Guidelines, 2015.

In our considered opinion, the 'right to use spectrum' should be treated as a Company's asset and such right should be transferable irrespective of any outstanding government dues and if the new owner of this right meets the security clearances required by the government. Restricting transfer of the right to use the spectrum may also result in a reluctance among investors to invest in the telecom sector. In the long term, this can be detrimental to innovation and competition in the sector.

Other than the specific points mentioned above, we are also broadly aligned with the elements mentioned by the department with reference to penalties, mergers and acquisitions, public safety, and national security. We look forward to sharing our inputs on these once these subjects have been detailed further.

Sir, we shall be glad to provide you with more substantiation on our submissions detailed above.

We are thankful for your consideration, and look forward to hearing from you.

Warm regards,
For **EXTREME** Infocom Pvt. Ltd.

Raunak Maheshwari

Airtel Response to DoT Consultation Paper on 'Need for a new law governing Telecommunication in India'

Executive Summary:

Airtel welcomes the Department of Telecommunications (DOT) Consultation on the *'Need for a new law governing Telecommunication in India'*.

Telecommunications, is an essential service[1] and contains certain core ingredients that enable ***public good***. In the last 25 years, the DoT and the TSPs together have powered the connectivity in the country and ensured onset of new era of information sharing, commerce & trade, social and digital inclusion and enabled public welfare to reach every household.

As we enter a new technology age, a holistic legislative framework is needed to correctly legislate and promote **market dynamism, nurtures investment in the sector, promotes competition and consumer welfare**, we believe and hope that proposed law will prepare the country and citizens for the future and provide the legislative framework to protect the interests of service providers, consumers and ensure orderly growth of digital communications sector in the long run.

We recommend the following aspects be duly considered and addressed in the new Act:

- Ensure a virtuous cycle of technological investments and sustainability of the sector
- Recognize the 'Public Good' element of spectrum
- Take note of and address convergence in technologies
- Ensure a wider consultation amongst stakeholders on creation of digital infrastructure
- In the era of data – harmonize new act with other sectoral requirements
- Be future proof, ensure regulatory certainty and apply the law prospectively
- Align with global best practices and the best global regulatory regimes
- Enshrine Regulatory Impact assessment (RIA) in the act
- Make digital infrastructure as a sine-qua-non in buildings (commercial / private)

More specifically, address critical issues that need resolution through the new Act :

- Align regulatory levies with best global ones: recover only administrative cost, and removal of double license fee on the same revenue
- Comprehensive review of penalty regime – graded, proportionate, create amicable settlement procedures
- Implement Rights of Way (RoW) in letter and spirit
- Convergence in truest sense: bring DTH licensing under Telecom ministry
- The Universal Services Fund (USO) Levy: sun-set the levy
- Be at the forefront of driving global standard setting and harmonization activities

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[1] As included in the Essential Services Maintenance Act,1981

- Share the cost of interception and security between the TSPs and LEAs/User departments
- Temporary shutdowns – refine the process with central government as single authority
- Make possession of illegal SIM boxes/repeaters/jammers as cognizable offence
- Mergers & Acquisitions – simplify, streamline and work in tandem with NCLT proceedings, align certain approvals like slump sale with other Acts like Companies/Income tax acts

We also request that the government shares the draft Act with all the stakeholders for their comments before finalizing it.

Preamble:

The DoT public consultation paper touches upon the very core of Telecommunications in India. The country should have Telecom law that is both relevant and facilitative and a perfect fit for the future and for this an open and transparent public consultation is a must.

Telecommunications' certain core ingredients such as spectrum have a ***public good*** element in it, and this proposed legislative framework can be an important document to achieve the stated **objectives of the Government including the aim of '*Antyodaya*' and also UN's Sustainable Development Goals (SDGs).**

A holistic legislative framework is needed to correctly legislate in this time of great change and evolution, one that **furthers market dynamism, nurtures investment in the sector, promotes competition and consumer welfare**, while discarding legacy rules that no longer remain relevant in the context of the digital ecosystem.

Therefore, as rightly noted in the DoT Consultation, the relevant Indian Telecom Acts that were issued before Independence, and the foundational Telegraph Act that continues as is from 1885, need to change; and a new law be brought in to replace them, rather than just an amendment as attested to by the actions of all the leading Telecommunications markets. Take the examples of the UK, Australia and the US, they have all continuously reformed their Telecom Acts:

1. **USA** – The Telecommunications Act of 1996 was the first major overhaul of a telecom law in the country in almost 62 years, after the Communications Act of 1934.
2. **United Kingdom** – The Communications Act 2003 superseded the Telecommunications Act 1984.
3. **Australia** enacted its Telecommunications Act in 1997.

As the broadband industry looks to 5G to meet the demands of a digitized world, and convergence among Terrestrial, Satellite, Broadcasting, Media and IT accelerates, discarding the boundaries between these technologies and acknowledging how users consume the same content across devices (whether TV, PC or Mobile) as well; **the need for pro-investment and pro-convergence in the modern legislative regime has never been greater.**

Given the unprecedented access to information, resources and digital services, often enabled by mobile networks, the society has a range of choices and the ability to transform for good. It is therefore critical to ensure that technological, device and content convergence is accounted for in the proposed new Act for the new India.

Telecom operators have delivered continuous network innovation and significant investments

Responding to commercial opportunities, competition and consumer demand, the mobile industry has continually enhanced mobile network technologies, introducing newer generations of network technologies to deliver ever-increasing service performance and to accommodate the explosion of data traversing mobile networks. These waves of mobile evolution and expansion have given rise to the mobile internet and resulted in a proliferation of smartphones, changing the very nature of the digital economy.

Telecommunications industry has put in INR ~11,000 billion worth of investments with close to INR 5000 billion towards spectrum commitments and approximately INR 7000 billion of infrastructure spend.

As per GSMA intelligence estimates[2], in 2021, the mobile ecosystem generated 4.7% of India's GDP, directly supporting almost 3.4 million jobs, and its activity indirectly supported more than 1.25 million people. Further, 5G alone could benefit the Indian economy by $455 billion between 2020 and 2040.

5G and the next generations of networks promise boundless connectivity and intelligent automation, taking network performance to a new level and providing a platform on which new digital services and business models can thrive.

All future generations of technologies and spectrum require continuous investment. It is important to note here that the investment cycle has reduced to 5 years. Rural markets, too, need more investment as they have a large unserved customer base with low paying capacity.

To achieve the true potential of this future, therefore, a few critical elements are required: substantial investment in digital infrastructure which will largely continue to come from private sources, a digital environment that inspires trust, and a modernized policy and regulatory framework that enables this.

The digital and mobile revolutions (in many ways they have converged into one powerful force) are still picking up speed. The changes that are upon us now—artificial intelligence (AI), robotics, the Internet of Things (IoT), and Metaverse, for example—promise both great progress and the likelihood for further substantial dislocation.

The experiences of very different markets around the world show that **digital economies can take root and grow under all kinds of circumstances, if a few basic tenets are put in place.** One key factor, of course, is a high-speed, reliable and robust digital infrastructure and the polices in place to promote it.

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[2] Mobile Economic Impact India, GSMA Intelligence, April 2022

A New Telecom Law for a New India

A holistic legal framework that reflects the changing digital landscape while reducing costs and barriers to network creation, deployment and expansion will deliver the best outcome for both the economy and society at large.

The rules designed to protect society should be applied evenly across the digital economy and not be so prescriptive that opportunities to innovate are blocked, especially since Telcos are already at a disadvantage, competing as they do on an unequal footing vis a vis currently unregulated entities from the tech world. In the dynamic digital environment, industry and business need the freedom and responsibility to figure out what works best. Being too prescriptive in regulation on one segment (i.e. the TSPs / Licensees) and enforcement can get in the way of the best outcomes for consumers.

In view of all of this, we suggest that policymakers keep the following building blocks in mind while drafting the proposed Telecom Law.

- The proposed law should recognize the 'public good' element in natural resources such as spectrum.
- The law should be revised /updated in a manner that:
    - promotes the greatest practicable use of industry 'self-regulation' rather than imposing constraints that will turn the industry into an 'approval' based regime;
    - does not impose undue financial and administrative burdens on participants in the industry;
    - enshrines within it the injunction that any regulatory charge/levy/fee must recover only the cost of administering the resource / asset rather than upholding or levying any legacy fees/charges;
    - establishes a forward-looking regulatory regime that supports the financial sustainability of the industry and provides non-discriminatory conditions to drive new innovations from large companies as well as SMEs;
    - enables the building and deployment of infrastructure to support future networks accessible to all;
    - creates and maintains a safe and trustworthy online environment to protect users from threats;
    - ensures that available spectrum serves the future demand for connectivity at an affordable rate;
    - mandates that a regulatory impact assessment (cost of regulation) is conducted for every regulatory intervention;
    - mandates that a continuous assessment of the market is conducted from a sectoral financial viability perspective.

The remainder of this document provides our specific comments based on the context provided in this preamble.

(A) Principles for New Law for Telecom Sector:

- **Create & protect virtuous cycle of technological investments; ensure sectoral sustainability**

The new law should be such that it creates a virtuous cycle of technologies and investments that sustain TSPs thereby allowing them to offer quality services to Indian consumers and enterprises and creating a vision for the Telecom sector that carries it forward over the next 25 years. This vision will act as the bedrock of India's socio-economy in the long term and facilitate the emergence of predictable, stable and consistent policies and regulations.

The industry has put in significant investments (~INR 11,000 billion) over last 25 years- in network, spectrum and services -and continue to make such commitments for next 20 years. The recent 5G spectrum purchases worth INR 1,50,000 crores is one such example.

It is important, therefore, that the law ensures these significant investments (financial as well as human capital) made by TSPs/licensees are protected and nurtured, and, the sector remains stable and sustainable in long run. It should do so by ensuring level playing field inter-se and vis a vis similar digital players currently unregulated but competing in same services segments.

- **Recognize the 'Public Good' element of spectrum**

Mobile networks resiliently absorbed the shock from the Covid-19 pandemic and, against the most insurmountable odds, kept a nation of one billion connected. This underscores the importance of spectrum as a national resource for the ***'Public Good'***, a fact that has also been endorsed by the Hon'ble Telecom Minister[3]. The cost of spectrum impacts the total cost of telecommunications services and the sustainability of the telecommunications industry itself. To ensure that every Indian gets access to both 5G and future generations of technologies it is essential that **spectrum allocation and pricing has as its bedrock the element of 'Public Good'.**

More importantly, as new spectrum users emerge, **we need to have a clear decadal roadmap for spectrum assignment and allocations**, with clearly defined terms and conditions (T&Cs).

- **Take note of and address convergence in technologies**

Due to the convergence in broadcasting and telecom services, it is possible to distribute Satellite TV channels on Telecom networks and vice versa. It is also possible to provide internet/telecom services over the TV Distribution platforms. Due to such convergence, telecom and broadcasting services are seen to be belonging to the same basket of services.

Moreover, there is also a convergence between Telecommunication services and online communications platforms on which there is a lack of clarity in the existing licensing conditions. Deployment of digital technologies has led to market convergence and 'intermodal' competition, as telephone, cable, broadcasting, wireless networks and OTT applications are increasingly able to offer voice, data and video over a single platform using or without using the spectrum.

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[3] https://www.zeebiz.com/india/news-public-good-element-in-spectrum-pricing-now-widely-recognised-telecom-minister-ashwini-vaishnaw-173290

Thus, this is an opportune time for a comprehensive legal framework and the new law should duly take note of such convergences and include provisions to ensure consumer interest.

- **Wider consultation amongst stakeholders on creation of digital infrastructure**

A corollary of convergence (as stated in the Preamble) is that the growth in services like OTTs and bandwidth-hungry applications drive huge traffic on the Telecom network today, to the extent that frequent capacity upgrades have become the norm. With the launch of 5G and a newer generation of bandwidth-hungry applications and services to come in the future as well, the need for creation of appropriate mechanisms and contribution of stakeholders towards creation of digital infrastructure needs to be deliberated. This would require a larger debate among TSPs, OTTs, Big Technology companies.

The fruits of broadband connectivity have been reaped equally, if not more, by providers of services such as streaming, and social media companies who are also the biggest drivers of traffic on network today. The thought of fair and equitable contributions from all such stakeholders who contribute towards creating traffic and thus impact network investments and capacities; is gaining currency every day, e.g., in Europe and America both.

In Europe, the operators have been arguing[4] for a fair contribution from such big platforms and the European Union (EU) authorities are now looking at this. To give an excerpt from a media article[5], the EU's digital chief Margrethe Vestager said as follows:

> *"...Because we see that there are players who generate a lot of traffic that then enables their business but who have not been contributing actually to enable that traffic. They have not been contributing to enabling the investments in the rollout of connectivity," she said*
>
> ...
>
> *"And we are in the process of getting a thorough understanding of how could that be enabled," Vestager said, adding that she was looking into how data traffic evolves over time and that related to the COVID-19 pandemic..."*

Hence, the new law must address this debate and create opportunities for creation of robust infrastructure for future ensuring sustainable investments in telecom networks.

- **The era of data: Harmonise the new Act with other sectoral requirements**

Competition policy is an effective and versatile tool to ensure the proper functioning of markets, and should be updated to reflect a number of characteristics of the digital economy. For example, control of data can confer a competitive advantage, and digital market assessments should not focus solely on price but also consider other dynamic effects on quality of service and performance. Better balance is required between telecoms sector regulation and competition law, the data protection and privacy law.

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[4] https://www.ft.com/content/2004d2df-c9c1-4876-bb56-4c42f80f4093

[5] https://www.reuters.com/business/media-telecom/eus-vestager-assessing-if-tech-giants-should-share-telecoms-network-costs-2022-05-02/

Further, the proposed modified/amended provisions of the Act should preferably be in sync with the various other Acts, i.e. the proposed Digital India Act and proposed Data Privacy & Protection Bill/Act, and the existing rules should be amended accordingly, and applied horizontally.

We urge the that such provisions under the new Act should not be in anyway restrictive for TSPs/Licensees, and rather should enable them to provide innovative services and experiences to subscribers/users since technological changes like 5G, 6G and beyond, will enable many new use cases and innovations (e.g. Cloud Computing / MEC / AI etc.) – thus making unique, innovative service offerings to subscribers/consumers/enterprises more and more pervasive. Hence the Act must ensure that licensees retain full flexibility and freedom to make use of data in a safe, secure manner, and they should not be put at any disadvantage compared to other similar players in the wider digital ecosystem who may be able to make use of same data and offer innovative or similar services without any restrictions.

- **Be future proof**

Telecom is a technology-oriented sector, with shrinking lifespan of technologies. Therefore, any change to an extant law should be future proof to address the future requirements of rapidly changing technologies and industry dynamics. **Additionally, while promoting new technologies, the new law should ensure that there exists a level playing field among all technologies.** For instance, many concerns like Same Service Same Rules with respect to OTT Communication Services remain unaddressed till date. The new law must attempt at resolving all such concerns.

- **Ensure regulatory certainty**

Telecom, is a capital-intensive sector wherein returns on investments *(infrastructure, spectrum and distribution network)* are realised over a long period of time. Existing TSPs have made considerable investments in their business and infrastructure (e.g., recent auction) based on the extant law. Therefore, any **change to a new framework should have a transition phase to ensure that existing businesses of TSPs are not adversely impacted and their investments duly protected**.

- **Apply the law prospectively**

Due to the inherent complexities and large investments involved in the sector, it is practically impossible to adapt to any new legal requirement which is beyond the capability of existing ecosystem/business viability. Therefore, **the new law should be applied prospectively not retrospectively.** For instance, any charges with respect to any resources assigned should be applied prospectively, i.e., after the new law comes into force as any retrospective charges on existing resources may wipe out the business viability of services.

- **Align with global best practices and the best global regulatory regimes**

India's new Telecom law must compete to be among the best global Acts and make India's regulatory regime one of the most attractive of any telecom market and investors. To this extent, it is heartening to note that DoT in consultation has recognised importance of global best practices.

"...Such a law needs to consolidate the existing laws governing telecommunication sector, while keeping in view global best practices..."[6]

- **Make digital infrastructure a sine-qua-non in buildings (commercial or public or private)**

Given that today telecom broadband connectivity is the lifeline of individuals, businesses and economies alike, this infrastructure should be facilitated by one and all. We recommend that by virtue of the new proposed act, the creation of telecom infrastructure and relevant permissions must be made sine-quo-non for every housing-related approval.

In other words, just like utilities such as Gas, Water and Electricity are facilities that are mandatory for a building, good telecom infrastructure should also be a mandatory requisite for enhanced customer experience with provisions made in the new act to ensure this while aligning this legal requirement with other sectoral laws like Housing / Building Code among others.

- **Enshrine Regulatory Impact Assessment (RIA) within it**

If India is to match the best regulatory regimes in the world, then we should adopt best practices from everywhere. Performing a regulatory impact assessment or an RIA is one such aspect. Some of the world's leading regulators have clear articulations on impact assessment, e.g.,

The UK Telecommunications Act 2003, under section 7, prescribes "**Duty to carry out impact assessments**"[7]. This is also reflected in the decisions that the converged Regulator OFCOM takes:

> *"The decisions which Ofcom makes can impose significant costs on our stakeholders and it is important for us to think very carefully before adding to the burden of regulation. One of our key regulatory principles is that we have a bias against intervention. This means that a high hurdle must be overcome before we regulate. If intervention is justified, we aim to choose the least intrusive means of achieving our objectives, recognising the potential for regulation to reduce competition...*
>
> *..... Impact Assessments form a key part of best practice policy making, which is reflected in our statutory duty to carry them out. They provide a way of considering different options for regulation and then selecting the best option. In selecting and analysing options, the need to further the interests of citizens and consumers is of paramount importance..."*[8]

Therefore, we believe that all policy and regulatory decisions and interventions should be based on RIA and the RIA as a concept must be enshrined under the proposed new law.

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[6] Para 7 of the DoT's extant Consultation Paper

[7] https://www.legislation.gov.uk/ukpga/2003/21/section/7

[8] https://www.ofcom.org.uk/consultations-and-statements/better-policy-making-ofcoms-approach-to-impact-assessment

(B) Some of the critical issues that need to be resolved:

a. **All regulatory levies must be aligned to the best global regimes, i.e., recover only cost of administering a resource or activity; remove double license fee on same revenue:**

Even after more than 25 years since opening of the sector, India's regulatory levies remain one of the highest globally. The hallmark of advanced regulatory regimes is that they charge annual recurring levies to recover only the cost of administering a resource, and make an annual budgetary projection, which then gets attributed to regulated entities.

In the UK, the Telecommunications Act 2003, section 38, deals with how administrative charges are to be fixed by the OFCOM. Further, subsection (4) of section 38 states[9]:

"(4) Those principles must be such as appear to OFCOM to be likely to secure, on the basis of such estimates of the likely costs as it is practicable for them to make—

*(a)that, on a year by year basis, the aggregate amount of the charges payable to OFCOM is sufficient to meet, **but does not exceed, the annual cost to OFCOM of carrying out the functions mentioned in subsection (5);***

*(b)that **the cost of carrying out those functions is met by the imposition of charges that are objectively justifiable and proportionate to the matters in respect of which they are imposed;***

*(c)that the **relationship between meeting the cost of carrying out those functions and the amounts of the charges is transparent;***

(d)that the charges fixed for persons who are liable to charges by reason only of being persons to whom SMP apparatus conditions apply are referable only to things done in, or in connection with, the setting, modification or enforcement of SMP apparatus conditions or the carrying out of the functions mentioned in subsection (6)(l); and

(e)that the charges fixed for persons who are liable to charges by reason only of being persons falling within subsection (2)(f), are referable only to costs incurred in, or in connection with, the carrying out of the functions mentioned in subsection (6)(g) and (l)..." **[Emphasis supplied]**

In the USA too, the FCC is mandated to recover the cost as annual regulatory fee

"...47 U.S.C. §159 establishes four broad categories of Commission activities as regulatory. These are all "enforcement activities, policy and rulemaking activities, user information services, and international activities." The statute then requires the FCC to "assess and collect" fees to recover the costs of these activities. Thus, the fees that cover the costs of these four types of activities are called regulatory fees..."[10] **[Emphasis supplied]**

Similarly, **in Australia**, under the Telecommunications Act 1997, Section 15, there are limits prescribed under the Act on the amount of charges that are imposed[11] by ACMA

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[9] https://www.legislation.gov.uk/ukpga/2003/21/part/2/chapter/1/crossheading/administrative-charges-imposed-on-providers

[10] https://www.fcc.gov/licensing-databases/fees/regulatory-fees

[11] http://classic.austlii.edu.au//au/legis/cth/consol_act/tlca1997377/s15.html

(Australian Communications and Media Authority) on the Carrier Licensees during an year and they should not exceed in proportion to certain costs of certain agencies like ACMA, ACCC (Australian Competition and Consumer Commission), and a few other categories.

It is therefore, our recommendation that India's new law aligns to the best global telecom regimes and brings the recurring regulatory levies at par with administrative cost recovery mechanism as followed in other advanced economies.

Furthermore, and on a separate note, there should not be any double license fee on the same revenue among the licensees.

b. A comprehensive review of penalty provisions must be conducted

The conditions in Unified License prescribe a penalty of up to INR 50 crores per instance per Service Area on Access Service, NLD and ILD for any violation of the license conditions. However, in the absence of any guidelines, a maximum penalty amount is often imposed on service providers even for the most minor of deviations. To ensure that service providers are not unduly penalized with heavy penalties, it is necessary to frame guidelines and **penalty provisions that are commensurate with the violation or shortcoming and to this end a proportionate, graded penalty matrix should be devised in consultation with the Industry.**

The UK Telecommunications Act 2003 prescribes various sections under which penalties can be applied on various regulated entities under the Act. Seemingly, there are different penal mechanisms for violations under different sections:

- Penalties for contravention of s.33 (s.35A, and 37);
- Penalties for non-payment of charges (s.41);
- Penalties for contravention of conditions (s.96);
- Penalties for security of public electronic communications networks and services: designated vendor directions;
- Penalties for contravention of Electronics Communications Code (s110A, 112).

As is clearly evident from the Act, one penalty fits all cases is neither logical nor proportionate. Hence it is required that a truly deterrent penalty regime, that is effective and manageable and saves the time, effort and costs of the Regulatory /Licensor in administering them, should be worked out.

Another area that the proposed law should **adjudicate on is a discount and settlement procedure in penalty cases.** Many jurisdictions settle such cases under such provisions. For example, OFCOM's Penalty Guidelines[12] 2017, that work under the Telecommunications Act 2003, has a provision for a discount for settlement in a regulatory case.

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[12] https://www.ofcom.org.uk/__data/assets/pdf_file/0022/106267/Penalty-Guidelines-September-2017.pdf

We believe that India should also enact a similar provision that will enable the Regulator / Licensor to have a similar settlement mechanism.

c. **RoW must be implemented in letter and in spirit**

India has ~35% fiber connectivity whereas Korea and China are closer to 99%. The stumbling block here is the costly and time-consuming RoW processes that span central, state and municipal jurisdictions. While the government has sought to address this by issuing RoW Rules 2016, which have brought RoW approvals under the PM Gati Shakti plan with the launch of the Sugam Sanchar portal, challenges like exorbitant charges, permission delays, fiber cuts without notice, no duct provisions remain.

The DoT Consultation has stated that:

"13. To enable investments, new law should also provide framework for various players in telecom value chain like service providers, infrastructure providers, RoW providers etc..."[13]

Thus, under the new Act, the permission for Telecom RoW should move to the Union of India, be made legally enforceable, and there should be a single window clearance for RoW permissions for laying fiber and installation of telecom towers. RoW charges must be consistent and commensurate only with the restoration charges to ensure the viability and affordability of services. Since fiber connectivity needs to proliferate with greater speeds, it is also important that the decision to lay fiber is given in a time-bound manner.

d. **Convergence must be achieved in the truest sense: bringing DTH licensing under the telecom ministry**

As highlighted in the Preamble, there has been a convergence of technologies (Telecom, Broadcasting, Media and IT) and devices (PC, TV, Mobile) and consumers want access to the same content in a platform (OTT / DTH) agnostic way. For instance, consumers these days increasingly prefer to avail of cable/DTH and broadband services from a single entity for ease of billing and interaction with their service provider. As evident from market developments also, many Multi System Operators (MSOs) these days are also providing Internet services and DTH and broadband services are seen to be belonging to a single bouquet of services.

Thus, to address the market and consumer requirements, it has become imperative for the service providers to merge their telecom and broadcasting/Distribution Platform Operator (DPO) businesses under a single entity. This will not only help consumers as they will be able to avail of services from a single entity, but will immensely help service providers in providing better service experience due to converged digital platforms and operational efficiencies.

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[13] Para 13, DoT's extant Consultation Paper

This change necessitates a converged law that allows converged licensing cum regulatory frameworks across technologies and platforms.

Since the DTH license involves a carriage of Satellite TV channels, it is issued under Section 4 of the Indian Telegraph Act, to enable synergies between Telecom and DTH. Therefore, both of these should be provided by the same entity or operator and, even in terms of the licensing framework, **DTH should be brought under the Telecom ministry.** This is also consistent with the fact that the regulator (TRAI) and adjudicating body (TDSAT) are also common for DTH and the Telecom Sector.

e. **The Universal Services Obligations USO Fund Contribution: sun-set the levy**

The private sector has been instrumental in achieving the objectives of the USO Fund over the years by constantly rolling out telecom networks in rural and unconnected areas, without much support from the USO Fund. Due to these complementary efforts of Industry and the Government, the rural tele-density has surpassed the objectives laid down under successive telecom policies.

Despite this, operators are still subjected to an ever-increasing outflow since the USO levy of 5% of Adjusted Gross Revenues remains unchanged.

Over the years, even though the USO collection has increased, the disbursement has remained low. As a result, there is a high amount of unutilised accumulated surplus in the Fund. This also indicates that the requirement to connect rural and remote India through such a high levy of 5% is not necessary, and there is a strong case to reduce the levy so that it is consistent with actual support requirements.

In light of the above, we recommend that abolishing or removing the USOF levy will help TSPs accelerate the rollout of more networks in underserved and unserved areas and augment capacities.

In the event that it is decided that the USO levy needs to continue, we recommend that the new Act should clearly expand the contributing entities and bring the big technology firms under its ambit. Discussions around getting contributions from big technology players/streaming companies have been gaining ground globally, e.g., in the USA, the FCC recently published (and adopted) its report on the *Future of the Universal Service Fund*[14] in which this aspect has also been discussed.

Taking into account the present situation, the new Telecom law when it is drawn up must address the USO contribution and either abolish or freeze the levy for the next few years until the current available funds are deployed effectively. It can then be restarted with a lower rate and an increased number of contributing entities.

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[14] Report on Future of the Universal Service Fund, FCC, 15th August 2022

f. Standards, Public safety and national security

We agree that the new law must have appropriate provisions related to standards, public safety and national security.

Standards, we believe that with its focus on "***Atmanirbhar Bharat***" and rising global stature, India will be at the forefront of driving global telecommunications standards. This will enable it to become a significant player in the global manufacturing and export market, creating and exporting globally harmonised equipment worldwide. To be able to achieve this, it is important that India participates in the global standard-setting bodies (SDOs) like 3GPP and ETSI, develop and get such standards adopted at such bodies. This will also require creating internal frameworks that are harmonised with global requirements (e.g., frequency bands, block sizes) and thus able to satisfy global needs.

National Security – Given the important role Telecommunications networks play in socio-economic and industrial resilience and growth, it is imperative that focus on national security remain paramount. TSPs have been at the forefront of ensuring that they comply with the requirements laid down by the law enforcement agencies. However, the same principle has not been applied on deregulated, delicensed entities (e.g., CPNs or OSPs) thereby putting a disproportionate obligation to comply on licensed TSPs alone.

Furthermore, the demands of Law Enforcement Agencies (LEAs) on NatSec requirements are increasing and putting a substantial cost burden on the TSPs. The time has now come for India to put in place a cost-sharing mechanism between TSPs and LEA/user government departments. This would also be in line with global best practices wherein governments share such costs. For example, **Australia's** Telecommunications (Interception and Access) Act 1979, prescribes[15,16] allocation of costs for such purposes in Section 207-208 and 210 of the Act. It divides costs between "Interception Capability" and "Delivery Capability" and puts mechanism of costs to be borne by Carriers and Interception Agencies, respectively.

"...Costs to be borne by the carriers

The capital and ongoing costs of developing, installing and maintaining a capability imposed on a carrier under section 190 or 191 in respect of a particular kind of telecommunications service are to be borne by the carrier...."

"...Costs to be borne by the interception agencies

The capital and ongoing costs, worked out in accordance with section 209, of developing, installing and maintaining a delivery capability imposed on a carrier under Part 5-5 in respect of a particular kind of telecommunications service are to be borne by the interception agency concerned..."

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[15] http://classic.austlii.edu.au/au/legis/cth/consol_act/taaa1979410/s210.html

[16] http://classic.austlii.edu.au/au/legis/cth/consol_act/taaa1979410/s207.html

In the **United Kingdom**, a similar provision[17] of Section 249, to share the cost burden through appropriate contribution has been put under the Investigatory Powers Act 2016.

"249 Payments towards certain compliance costs

(1) The Secretary of State must ensure that arrangements are in force for securing that telecommunications operators and postal operators receive an appropriate contribution in respect of such of their relevant costs as the Secretary of State considers appropriate.

(2) In subsection (1) "relevant costs" means costs incurred, or likely to be incurred, by telecommunications operators and postal operators in complying with this Act...

... (8) For the purpose of complying with this section the Secretary of State may make, or arrange for the making of, payments out of money provided by Parliament."

In view of the above, we recommend that India's new proposed Telecom Act makes a provision of sharing the cost of interception and security between the TSPs and various LEAS/User departments of the government.

g. **Mechanisms related to local orders asking temporary stopping / shutdown of services in an area/district/state must be refined**

The current ad-hoc requests and orders to stop internet services in an area, e.g., during states' examinations or other such cases cause significant inconvenience to the local public at large. We believe that this should occur only in a case of clear national security risk, and the order should come via a relevant and competent authority, i.e., the Home Ministry.

In any situations that give cause for concern re law and order (L&O) at the local level, the request must be routed again through the competent authority. This would include the Ministry of Communications, who in turn should have defined criteria and parameters that it must consult before releasing such orders for on ground implementation by the TSPs. And this should happen only in cases where no other less intrusive tool/mechanism is available; in other words, shutting down a service in an area should be the last resort.

Since Telegraph is a Union subject, we believe that only Central government should be the governing authority in this regard, unless the order to shut services is through the High Court or a similar higher authority.

h. **Appropriate use of telegraph equipment be introduced**

In order to ensure appropriate use of telegraph equipment and mitigate issues related to interference, the new Act should declare the use of illegal SIM boxes / repeaters / jammers as a non-bailable and cognisable offence.

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[17] https://www.legislation.gov.uk/ukpga/2016/25/section/249/enacted

Similarly, any damage / vandalism of telegraph apparatus or BTS / site or building serving as BSC/MSC or any physical telegraph apparatus should be classified as a non-bailable and cognisable offence.

Further provision should be made in the Act that any/all authorities and agencies (e.g., civil, utility) whose work may have a bearing on a Telegraph asset (e.g., Fiber/ Tower) must mandatorily give an advance notice of 30 days before commencing the work on the route so that TSPs / IP1s can make appropriate arrangements of any damage, cuts, etc. In the absence of such timely and appropriate notice, the agency/authority/entity must compensate for the damage and loss caused to the TSP and/or IP1.

i. **Mergers and Acquisitions (M&As): Simplify and align approval process with NCLT proceedings:**

   - **Do away with separate notification to DoT about merge/demerger and reduce the approval timelines given that DoT is already part of NCLT proceedings:**

Under Clause 3(a) of the DoT merger guidelines, a notification is to be given to DoT for any merger/demerger proposal for its comments/observations. Under the Unified Licences Act, the merging entities must seek the prior approval of DoT before effecting the merger/demerger.

Per Section 230 of the Companies Act, 2013, the applicant/petitioner companies require filing of the Scheme with the Central Government (Regional Director), the income-tax authorities, the Reserve Bank of India, the Securities and Exchange Board, the Registrar, the respective stock exchanges, the Official Liquidator, the Competition Commission of India, if applicable, and such other sectoral regulators or authorities including DoT which are likely to be affected by the Scheme. All the said requirements and the approvals required thereunder under the Listing Regulations and the Companies Act, 2013 are prior to sanction of the Scheme by NCLT and don't require the applicant/petitioner companies involved in the Scheme to re-visit any authority after the sanction by NCLT. Objections, if any, from all the other authorities are dealt with during the NCLT process itself.

While DoT is a part of the NCLT process and actively participates in the whole process, the applicant/petitioner companies are still required to approach DoT for approval of the demerger/merger of licences or telecom business on record. The NCLT proceedings itself take at least 8-12 months and the approval from DoT thereafter also take 2-4 months, leading to a total time frame of 10-16 months for the demerger/merger to be completed. This results in significant loss of time and value to the merging entities.

Since DoT is already a part of the NCLT merger proceedings, the merging entities should not be required to approach DoT separately for its approval and the approval of DoT should be a part of the NCLT merger/demerger process, and therefore all licenses and resources should be transferred without any delay to the new entity without any further application or request to DOT.

- **Recognise and align approval of Slump Sale / transfer of undertaking in line with various other Acts like Companies Act, Securities Law and Income Tax Act:**

DoT only allows the merger/demerger of telecom licences/business, pursuant to a scheme of arrangement / demerger to be sanctioned by NCLT. However, transfer pursuant to a scheme of demerger/merger is not the only method available for the transfer of an undertaking by a company and various legislations, including the legislations set out below, recognise other methods of transferring an undertaking or a business from one entity to another:

a) **Companies Act:** The board of directors of a Company may "sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings", and such action shall be subject to approval of the shareholders of the Company by way of a special resolution as provided under Section 180 of the Companies Act.

Thus, Companies Act recognises that the board of directors of a company is empowered to dispose of / sell an undertaking, including by way of a slump sale / business transfer. In fact, transfer of an undertaking by way of a slump sale / business transfer agreement (under Section 180 of the Companies Act) is common in industrial parlance.

b) **Securities laws:** Regulation 30 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("SEBI LODR Regulations"), requires listed companies to make certain disclosures to the Stock Exchanges of certain events or information, within prescribed timelines. As per Regulation 30, read with Schedule III, of the SEBI LODR Regulations, one of the events that is required to be disclosed by a listed company to the Stock Exchanges is 'Acquisition(s) (including agreement to acquire), Scheme of Arrangement (amalgamation/ merger/ demerger/restructuring), or sale or disposal of any unit(s), division(s) or subsidiary of the listed entity or any other restructuring."

Therefore, the SEBI LODR Regulations recognise that the sale or disposal of any unit or division of a company may be undertaken by way of a slump sale / business transfer.

c) **Tax laws:** The Income-tax Act, 1961, specifically defines a 'slump sale' to mean the transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales. **Therefore, it is evident that the Income-tax Act, 1961 specifically contemplates a transfer of an undertaking by an entity by way of a slump sale.**

In view of the above we recommend that either of the above 3 methods already prescribed under various laws should be sufficient for DoT to consider the slump sale/business transfer.

GOVERNMENT OF MIZORAM
DIRECTORATE OF INFORMATION & COMMUNICATION TECHNOLOGY
AIZAWL :: MIZORAM

No. B.12012/67/2021-ICT (DTE) Dated Aizawl, the 11th August, 2022

To,

The Director,
Ministry of Communications,
Department of Telecommunications,
(Restructuring Section),
Government of India.

Subject: *Comments on the Consulation Paper on 'Need for a new legal framework governing Telecommunication in India'- reg.*

Sir,

With reference to your letter No. 17-01/2020-Restg.(Pt) dated 28.07.2022 , the comments for Consultation Paper on 'Need for a new legal framework governing Telecommunication in India' is as below:

"The new framework for telecommunication should also consider provisioning for hilly and remote corner of the country such as the North Eastern Region as the need for telecommunication is much more crucial for the upliftment and development of the Region while strategy and methodology of setting up telecommunication is also very challenging due to difficult terrain"

Thanking you

Yours faithfully

(Dr. LALTHLAMUANA)
Chief Informatics Officer
Information & Communication Technology

F. No. 2-19/IT/DOT(SOFC)/2022
Andaman & Nicobar Administration
Department of Information Technology
****

Port Blair, dated 30th August, 2022

To

Shri. Naveen Kumar
Director (Restg.)
Department of Telecommunications
20, Ashoka Road, Sanchar Bhawan, New Delhi – 1

Sub : Inviting comments on the consultation paper on "Need for a new legal framework governing telecommunication in India – reg.

Sir

This has reference to your letter No. 17-01/2020-Restg(Pt.) dated 28th July, 2022 addressed to the Chief Secretary, Andaman & Nicobar Administration on the subject cited above. In this regard the observation / comments on the consultation paper are as follows :

a. Considering the importance of Telecommunication in the growth of the Nation, it is felt that such a comprehensive legal framework would address all the issues in promoting uniform proliferation of telecommunication facility across the country considering the emergence of new technology .
b. The scope of Universal Service Obligation Fund (USOF) may be made much broader to extend the telecommunication infrastructure in rural and more particularly in the remote and inaccessible areas.
c. The provision for ROW permission for telecommunication infrastructure may be made more robust and may have overriding effect in case of ROW permission required in Forest and Tribal Areas. The ROW may also be made time-bound with automatic approvals, in case denial is not communicated with reasons within a reasonable time to be fixed by Government of India.
d. Suitable provisions for building of Common Duct along with all future road constructions by agency and also during expansion/ renovation of already laid roads. The common infrastructure may be on sharable basis on payment of fixed fees which can be uniform across the country.
e. The new legal framework may also have suitable provision for promotion of Telecommunication Equipment Manufacturing within the Country with suitable Quality Control System put in place.
f. The new legal frame work may also have suitable provisions for ensuring Quality of Service (QoS) particularly in remote and inaccessible areas with minimum standards and may have suitable penal provisions for not meeting the standards by any service provider.
g. The new legal framework may have suitable provisions for arbitration and the arbitrator may be of two levels first at State / UT level and the 2nd at Central Level.

This has approval of Secretary (IT), A & N Administration, Port Blair.

Yours faithfully

Special Secretary (IT)
30/8/22

Government of Odisha

Electronics and Information Technology Department

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Letter No. 2845 /E&IT Dated. 5.09.2022

EIT-GM-MISC-0056-2022

From

Shri Bichitra Kumar Mishra,
Joint Secretary to Government

To

The Director (Restg.), Restructuring Section,

Department of Telecommunications,

Ministry of Communications, GoI

E-mail Id: naveen.kumar71@gov.in

Sub: Comments on the consultation paper on "Need for a new legal framework governing Telecommunication in India" – Regarding

Sir,

In inviting a reference to your D.O. No.17-01/2020-Restg.(Pt.), dated 28.07.2022 on the above subject, I am directed to enclose herewith a copy of the comments pertaining to Electronics & Information Technology Department, Government of Odisha on the consultation paper on "Need for a new legal framework governing Telecommunication in India" for your kind information and necessary action at your end.

Yours faithfully,

Joint Secretary to Government

COMMENTS ON CONSULTATION PAPER ON "NEED FOR A NEW LEGAL FRAMEWORK GOVERNING TELECOMMUNICATIONS IN INDIA"

Some of the comments on the legal framework are as follows.

Comment 1: ROW: There is a need to have a uniform ROW policy across the states, which needs to address the concern of the states in terms of compensation for any damage to its infrastructure or capex for additional infra.

There is a need to have a common duct in the cities as well as along the NHs to avoid frequent digging of roads which causes interruptions to public traffic and compromises road safety. The ducts along highways need to be funded by NH authorities. Similarly, the funding mechanism for constructing ducts in municipalities, corporates, and small towns needs to be defined and to be completed in a specific time frame. Once a duct is constructed leasing mechanism to operators, infra providers and other utility companies need to be worked out too.

Comment 2 USOF: The scope of USOF needs to be limited to the provision of 4G/5G services to each village in the country, and the provision of affordable broadband to each household in rural areas specifically to BPL houses. It is observed that USOF has not been able to provide a basic communication facility to all the villages to date. Broadband provision to rural households is far away. USOF should focus on the demand for the right to broadband by all. Capacity building for broadband usage in rural tribal areas could be funded by USOF.

At this point increasing the scope of USOF for investing in R&D and indigenous technology space may not be desirable.

Comment 3 Need for consolidated act:

Key regulations for Telecommunications in India are:

1. Indian Telegraph act 1885
2. Indian wireless telegraph act 1933
3. Cable television networks (regulation) act 1995
4. Telecom regulatory authority of India act 1997
5. Information Technology Act 2000 (Has indirect application to some

telecom internet-related issues, particularly on surveillance rights of Government.

All the major countries have a key telecommunication act that forms the basis for regulation, licensing, etc of telecommunications. A few of them are

1. Communications act 2003 of UK. In addition to the Communications Act, there are various legislations (and subordinate legislation sitting underneath) that may also impact the provision of communication services and the operation of communication networks.
2. IMDA act 2016 of Singapore and Telecommunications act,1999 revised from time to time.
3. The Communications Act of 1934, as amended (the Act), authorizes the Federal Communications Commission (FCC) to regulate telecommunications, cable, wireless, satellite, and other similar services in the USA.

Probably the existing multiple acts on Telecom in India could be consolidated into a new Telecommunications act so that one does not have to deal with many acts (the major act dates back to 1885!). The existing practice of separate regulatory and licensing authorities has proved to be efficient. The same may continue. Due diligence with the legal authorities and **other stakeholders is to be carried out before incorporating any change in the proposed act.**

Comments 4. On the issue of spectrum trading, leasing sharing, etc, international best practices need to be followed to avoid monopolistic tendency by any bidder. Refarming, Trading, leasing, and surrendering the spectrum are necessary for the growth of industry and the adoption of new technology. Legal policy framework for these need to be put in place.

Comments 5. To make the law/act acceptable to domestic as well as global industries and investors adequate provision for continuity of the law till it is superseded by any other law to be maintained. No **retrospective amendment** should be permissible considering a huge capital investment in the telecom industry.

Comments 6. The Licensorneeds to introduce incentives for spectrum in rural areas so that operators can provide 4G/5G services in areas that are commercially non-remunerative. This may be provided for in the new act.

Comments 7 The proposed new act should have provisions to take care of state-specific disaster management. It should also have provisions for a public emergency, and public safety for taking measures in the interests of national security, data security, and citizens' privacy. Specifications to have such provisions in the network need to be defined and be part of the licensing mechanism.

सत्यमेव जयते

भारतीय दूरसंचार विनियामक प्राधिकरण
TELECOM REGULATORY AUTHORITY OF INDIA
भारत सरकार / Government of India

No.: R-3/5/(3)/2021-BBPA

Date: 31.08.2022

To,

The Secretary,
Department of Telecommunications,
Sanchar Bhawan, 20, Ashoka Road, New Delhi.

Subject: DoT Consultation Paper on "Need for a new legal framework governing Telecommunication in India – reg.

This is with reference to the email dated 04.08.2022 seeking views/ comments/ suggestions on the Consultation Paper on 'Need for a new legal framework governing Telecommunication in India' issued by DoT on 23.07.2022. In this regard, it is informed that, TRAI is already in the process of preparing and issuing a comprehensive consultation paper covering various issues related to policy and regulation for facilitating convergence of Telecommunication and Broadcasting.

2. As the issues related to the legal framework for the telecommunication sector now encompass convergence of Telecommunication and Broadcasting, it may be necessary to widen the scope of the consultation process beyond Indian Telegraph Act, Indian Wireless Telegraphy Act and Telegraph Wires (Unlawful Possession) Act.This requirement for convergence of Telecommunication and Broadcasting was also brought out by various stakeholders in a recent brain-storming session with the service providers and industry associations of Telecommunication and Broadcasting Sectors, held by TRAI on 01.08.2022, at New Delhi.

3. The Parliamentary Standing Committee on IT called TRAI and DoT to depose before it and given their opinion on the subject matter ***'Inter-Sectoral review of challenges of emerging and converging technologies, entities and practices'.*** TRAI presented its view point on the subject matter to the Parliamentary Standing Committee on IT during the sitting of the committee held in Nov. 2020. It was emphasized that due to the impact of technological convergence of Media, Network and Devices, determining oversight jurisdictions and regulatory authorities for converged technologies becomes unclear as the boundaries that once separated single-function technologies blend and blur together. It was pointed out to the Committee that there is need for restructuring of the existing laws, rules, regulations and institutions to meet the emerging requirements of Telecom, IT, Broadcasting, space communication sector. A copy of background note submitted by TRAI to the Parliamentary Standing Committee on IT on the subject matter is attached herewith.

"प्रभावी विनियमन - सुगम संचार"

"Effective Regulation - Ease of Communication"

4. On the aspect of unified legal and regulatory framework, TRAI has also provided its input to Niti Aayog in reference to the meeting held in Dec 2020 to discuss *'Principles for India's Digital Economy'*. It was brought to their notice that large scale changes in the telecommunication, information technology, satellite services and broadcasting sector have taken place due to convergence of technologies. Without a convergence law and converged regulatory framework, any attempt to regulate these sectors may result in regulatory gaps and overlaps, imperfect competition, and disputes thereby stunting the growth of these sectors and hampering in exploiting opportunities arising out of technological developments.

5. Further, TRAI has already sent a comprehensive proposal for amendments of TRAI Act, 1997 to DoT duly taking into account regulatory practices being followed in other regulatory bodies in India as well as in telecom regulatory bodies in many countries across the world. It is suggested that while framing new telecom laws the said proposal may also be appropriately considered by DoT.

6. Hence, it would be desirable that draft law/ legal framework governing Telecommunication in India once prepared by DoT, is shared with the Authority so that TRAI can give its response as per due process.

This letter is being issued with the approval of the competent authority.

Encl : As above

(Sanjay Kumar)
Joint Advisor(BB&PA), TRAI

150 YEARS OF CELEBRATING THE MAHATMA

Kerala Prisons & Correctional Services

Prisons & Correctional
Services Headquarters
Poojappura,
Thiruvananthapuram-12
☎:0471-2342532
✉:keralaprisons@gov.in

Dated : 23-08-2022

No P4-19073/2022/PrHQ

From

Director General of Prisons & Correctional Services

To

Sri. Rahul Yadav, ITS
Asstt. Director General (CS-I)
Department of Telecom, Ministry of Communications

sir,

Sub : Jails - Prisons Head Quarters - Need for a new legal framework governing Telecommunication in India- Comments reg:-

Ref : E-mail dated : 28/07/2022

Kind attention is invited to the subject and reference cited.

This is to inform that Kerala Prisons department has no specific suggestion/opinion regarding this matter.

yours faithfully

Vinod Kumar M K
Deputy Inspector General of Prisons
(HQ)
For Director General of Prisons &
Correctional Services